United Nations E/C.12/KEN/2-5

Economic and Social Council

Distr.: General
26 February 2014

Original: English

Committee on Economic, Social and Cultural Rights

Consideration of reports submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights

Combined second to fifth periodic reports of States parties due in 2013

Kenya*

[1 July 2013]

* The present document is being issued without formal editing.

GE.14-41223

1441223

Please recycle

Contents

		Paragraphs	*Page*
List of abbreviations			3
I.	Introduction	1–12	4
	A. Context of implementing the rights under this Covenant	3	4
	B. Kenya Vision 2030	4–5	4
	C. Kenya Population and Housing Census 2009	6	5
	D. The Constitution of Kenya 2010	7–12	5
II.	Reporting on the substantive provisions	13–246	6
	Article 1 – Right to self-determination	13–30	6
	Article 2 – Progressive realization of rights	31–54	10
	Article 3 – Non-discrimination and equality	55–62	15
	Article 6 – Right to work	63–74	17
	Article 7 – Right to just and favourable conditions of work	75–81	20
	Article 8 – Right to form and join trade unions	82–87	21
	Article 9 – Right to social security	88–93	22
	Article 10 – Protection of the family	94–108	24
	Article 11 – Right to adequate standard of living	109–167	28
	Article 12 – Right to health	168–187	38
	Article 13 – Right to education	188–219	42
	Article 15 – Right to take part in cultural life	220–227	47

List of abbreviations

AIDS	Acquired Immunodeficiency Syndrome
ASAL	Arid and Semi-Arid Lands
CAJ	Commission on the Administration of Justice
CDF	Constituency Development Fund
DTAQA	Directorate of Technical Accreditation and Quality Assurance
DPP	Director of Public Prosecutions
EAC	East African Community
ECDE	Early Childhood Development and Education
EU	European Union
FDSE	Free Day Secondary Education
FGM	Female Genital Mutilation
FPE	Free Primary Education
GDP	Gross Domestic Product
GER	Gross Enrolment Rate
HIV	Human Immunodeficiency Virus
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDWS	Irrigation, Drainage and Water Storage
ILO	International Labour Organisation
KCDP	Kenya Coastal Development Project
KDHS	Kenya Demographic and Health Survey
KISIP	Kenya Informal Settlement Improvement Programme
KNCHR	Kenya National Commission on Human Rights
Kshs	Kenya Shillings
MRC	Mombasa Republican Council
MTPs	Medium Term Plans
NAAIAP	National Accelerated Agricultural Inputs Access Programme
NER	Net Enrolment Rate
NHIF	National Hospital Insurance Fund
NGEC	National Gender and Equality Commission
NGO	Non-Governmental Organisation
OVCs	Orphans and Vulnerable Children
TVET	Technical and Vocational Education and Training
TPR	Textbook-Pupils Ratio
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
WHFSP	Water Harvesting for Food Security Project

I. Introduction

1. The Government of the Republic of Kenya has the honour to submit to the Committee on Economic, Social and Cultural Rights, in conformity with Article 16 of the International Covenant on Economic, Social and Cultural Rights (hereinafter "ICESCR" or "the Covenant"), its combined Second-fifth Periodic Reports under the Covenant. This Report has been compiled in accordance with the guidelines available on preparation of a report under ICESCR.

2. This Report was generated by the various Government departments which work on economic, social and cultural issues under the coordination of the Ministry of Justice, National Cohesion and Constitutional Affairs. Civil society organisations which work on economic, social and cultural rights and the country's national human rights institutions – the Kenya National Commission on Human Rights and the National Gender and Equality Commission also participated during the writing of the report.

A. Context of implementing the rights under this Covenant

3. In the last five years, the country has taken epochal strides that have significantly improved the context of implementing human rights. Major structural and policy changes have been undertaken by the State as part of resolving the "deep seated and long-standing divisions" that were exposed by the violence that followed the disputed election results in 2007. A reform agenda programme agreed to by the Grand Coalition Government was given the force of law via the National Accord and Reconciliation Act, (No 4 of 2008), which included a time-bound programme for the delivery of a new Constitution, various institutional reforms including of the Judiciary, the Police, the Civil Service, and addressing the emotive issues of land reform, poverty reduction and regional inequalities.

B. Kenya Vision 2030

4. Subsequently, Kenya's development planning and delivery of public programmes has incorporated these major national priorities under the Kenya *Vision 2030*. This policy blueprint has as its overall aim as the transformation of Kenya into a newly industrialising "middle income country providing high quality of life for all of its citizens by 2030". The Vision also aims to "create a cohesive, equitable and just society based on democratic principles grounded in the existing rich and diverse cultures". As part of its international obligations to respect, protect, promote, ensure and fulfil human rights, the Kenya *Vision 2030* also commits to ensuring "economic development across all regions of Kenya, to build a just and cohesive society with social equity in a clean and secure environment" as well as the realisation of a "democratic political system founded on issue-based politics that respects the rule of law and protects the rights and freedoms of every individual..."

5. The Vision, implemented through five-year Medium Term Plans (MTPs) is currently in its second five-year phase. Each year, the Ministry for National Planning and Vision 2030 has issued annual progress reports on the Implementation of the First MTP with each Ministry reporting according to pre-agreed targets reflected in their performance contracts and measured against the National Handbook of Indicators. Tracking progress on public programmes and specifically economic, social and cultural rights has therefore significantly improved and is set to be strengthened in the newly-developed MTP which will cover the period from July 2013-June 2018.

C. Kenya Population and Housing Census 2009

6. To generate socio-economic data required for more effective decision-making, in 2009 the Government undertook its most comprehensive population census under the banner of "Counting People for Implementation of *Vision 2030*. This Census Report provides important statistics helpful in measuring progressive realisation of economic, social and cultural rights. Such statistics include social economic data in the very relevant fields relating to: the country's 38.6 million population distribution by age and sex; population and household distribution by socio-economic characteristics (Education, labour force, disability, livestock type, household assets, housing condition and amenities, ethnic affiliation, and religion). With the ongoing effort by the Ministry of Planning to develop human rights-sensitive indicators, this data will be invaluable.

D. The Constitution of Kenya 2010

7. Complementing the National Accord and Reconciliation driven programmes, the Kenya *Vision 2030* and the 2009 Kenya Population and Housing Census, was the finalisation of a new Constitution. In a referendum held on 4 August, 2010, Kenyans voted 66.9% to 30.9% for a new Constitution which was promulgated on 27 August, 2010 giving Kenya a most progressive constitutional framework with a Bill of Rights that provides for economic and social rights (Article 43) and other important measures outlawing all forms of discrimination (Article 27). Moreover, it ensures that the principles of the human rights approach to development, including participation, accountability, non-discrimination and transparency are part of the national values spelt out in Article 10 and throughout the Constitution and binds public and State officers in the delivery of public services. Under provisions relating to implementation of rights and fundamental freedoms, Article 21 requires State organs to "observe, respect, protect, promote and fulfil the rights in the Bill of Rights and requires the State to take progressive legislative, policy and other measures..." to achieve the progressive realisation of the rights guaranteed under Article 43". The Constitution also specifies that conventions and treaties ratified by Kenya automatically become part of Kenyan law (Article 2 (6). This provision to a great extent now simplifies post-ratification domestication procedures and makes it easier for right holders to seek remedies for rights violations or denials. In developing the second MTP consideration of these constitutional requirements has been made.

8. Important also for the implementation of human rights is the new devolved governance structure under Article 174 of the Constitution which is established with a view to among other things, promote democratic and accountable governance, recognise the rights of communities to manage their own affairs and to further their development and also ensure equitable sharing of national and local resources throughout Kenya. This new structure has established two levels of government: the National and the County Governments, with the latter being assigned the responsibility of implementing programmes including promotion of primary health care, ambulance services, control of air pollution, cultural activities, and county planning including for housing, water and sanitation services (Fourth Schedule of the Constitution of Kenya, 2010). Service delivery has therefore been taken closer to the point of end use and it is expected that this will significantly improve the realisation of economic, social and cultural rights. Devolution has indeed been hailed as a central promise of Kenya's Constitution, with expectation by Kenyans that County Governments will deliver effective services and that they hold the promise for equal opportunities and will deal with regional inequalities.

9. Coupled with this, is the strengthening of the Judiciary with a High Court with "jurisdiction to determine whether a right in the Bill of Rights has been denied, violated,

infringed or threatened" (Article 165 (3) (b)) and which in the Bill of Rights is required to "adopt the interpretation that most favours the enforcement of a right or fundamental freedom" (Article 20 (3) (b)). Article 20 (5) requires that in applying any right under Article 43 (economic and social rights), the State has responsibility to show that resources are not available and that in allocating resources it shall give "priority to ensuring the widest possible enjoyment of the right or fundamental freedom..."

10. The Bill of Rights is undoubtedly going to have major impact on the realisation of economic, social and cultural rights especially because it has also removed restrictions on who can institute court proceedings to enforce a right (Article 22). Further the Constitution provides that "no fee may be charged for commencing such proceedings."

11. The Constitution has also further strengthened the institutional mechanisms for human rights by providing for the establishment of the Kenya National Human Rights and Equality Commission which has been restructured into three national institutions; the Kenya National Commission on Human Rights (KNCHR), The National Gender and Equality Commission (NGEC), and the Commission on Administrative Justice. The three Commissions are fully operationalized and are providing leadership and oversight in the implementation of the Bill of Rights.

12. At the time of completing this report, Kenya had just concluded its first general election under this Constitution. It is expected that the new administration will continue implementing it through the second MTP.

II. Reporting on the substantive provisions

Article 1 – Right to self-determination

13. Kenya is a sovereign republic and a multiparty democratic State. The Constitution affirms fundamental national principles and values of unity, participation of the people, equality, equity, inclusiveness, non-discrimination and protection of the marginalised and vulnerable people. It also protects the cultural foundations and expression of the Kenyan people as an integral part of the right to self-determination. The principle of non-discrimination runs throughout the Constitution as a further affirmation of the country's commitment to recognise and protect the diversity of the people of Kenya and their right to self-determination as equal members of the Kenyan population. The Government of Kenya promotes respect for all cultures, ethnicities, races, gender, political opinions and religious beliefs.

1. Legislative measures on self-determination

In its concluding remarks, the Committee recommended that the State party include economic, social and cultural rights in its new Constitution, with a view to incorporating the Covenant rights into domestic law and ensuring their direct applicability in the courts.

14. The Constitution of Kenya, 2010, under Article 43 guarantees the right of every person to economic, social and cultural rights, including the right to the highest attainable standard of health, accessible and adequate housing, reasonable standards of sanitation, adequate food of acceptable quality, clean and safe drinking water in adequate quantities, social security and education. The processes of developing specific legislation and policies and implementing programmes to realise these rights are underway through various Ministries and guided by the Kenya Vision 2030.

2. Increased participation in decision-making at local level

15. The Constitution also introduces devolved governance and decision-making that came into operation after the March 2013 elections. This gives Kenyans greater say in determining the development initiatives in their local areas. This is an important development that is strengthened further by the Constitutional requirement of public participation in governance, legislation, policy-making, financial management and other functions. Kenya embraces the right to self-determination that eliminates discrimination in political, legal and administrative institutions while recognising and protecting special group rights.

16. The Constituency Development Fund (CDF) introduced in 2003 has enabled important improvements in local development. Under the new devolved system, the nation is divided into 47 governance units known as Counties and these are further devolved into constituencies and wards. The system of devolution provides greater citizen involvement in how development, economic, social and cultural rights as well as political engagements are undertaken.

3. Internal and external challenges of self-determination

17. Kenya has faced the challenge of a group called the Mombasa Republican Council (MRC) seeking secession of parts of the Coastal region from the rest of the country. Although they did not have the support of the majority of the residents of Mombasa and other Coastal Counties, the MRC embarked on initiatives aimed at frustrating processes such as voter registration, political party nominations and even elections. Members of MRC have used violence in pursuing their objectives that put many Kenyans at risk. The Government, pursuant to the Prevention of Organised Crimes Act (No. 6 of 2010) banned the MRC via Gazette Notice No. 12585 of 18 October 2010. The MRC challenged the Government's ban on the group (*Randu Nzai Ruwa and 2 Others v. the Internal Security Minister and Another, Misc. Application No. 468 of 2010*). Although the High Court reversed the order banning MRC, finding that it was a political group, it also clarified that the Constitution did not contemplate secession and instead asserted the unitary and indivisible sovereignty of Kenya.

18. The Government has appealed the ruling lifting the ban on MRC. This case demonstrates some of the challenges of varied interpretations as well as misinterpretations of the right to self-determination in the country. Kenya remains committed to the definition of self-determination in the Vienna Declaration of 1993 which recognises that the right to self-determination does not authorise or encourage actions that undermine the territorial integrity or political unity of a sovereign and independent State which complies with the principles of equal rights and self-determination of people as Kenya does. It also raises the challenge of upholding the right of self-determination where groups masquerade as political movements while in fact pursuing subversive, criminal and even violent agendas.

19. Externally, Kenya has had to confront increased terror attacks directed by Al Shabaab militants particularly based in Somalia. Kenya had to intervene militarily in Somalia to stop this Al-Shabaab threat. Second, Kenya faces a further challenge to its territorial integrity in relation to a claim made by Uganda over Migingo Island in Lake Victoria which is part of the Kenyan territory. The standoff started when Ugandan authorities began levying an illegal fee on the fishermen living there and intimidating, evicting and brutalizing many of the island inhabitants. Kenya maintains its claim over the Island, but as a member of the East African Community (EAC), it is using amicable means to settle its claim.

4. Protection of communities in mining areas

20. The Government of Kenya is aware of the heightened need to take measures that protect the welfare of communities and of the people as a whole, as Kenya's mining sector expands, including the discovery of oil in Turkana, titanium in Kwale and coal in Kitui. The Government is keen to ensure that exploration of these minerals promotes the welfare of local economies as well as the national economy of Kenya. The Government is also making efforts to ensure suitable mechanisms are in place and has sought support from the World Bank and the African Development Bank to review the Petroleum (Exploration and Production) Act (Chapter 302 of the laws of Kenya) and other Laws governing the excavating sector, as well as developing terms on the exploration of natural gas terms. These measures will seek to ensure that the rights of local communities in these areas are not undermined as Kenya concludes several bilateral agreements with external partners who will enable exploration of the natural resources.

21. As such, the Government has commenced consultations to put in place sound policy and legislative frameworks that allow for adoption of good practices that ensure local communities are not disadvantaged in terms of revenue sharing, employment, compensation and relocation. For example under the Petroleum Sharing Contracts (PSC) that Kenya is currently entering into, Under the Petroleum Act, a PSC has an implied term that the contractor will give preference to the employment and training of Kenyan nationals in petroleum operations and give preference to the use of products, equipment and services locally available. This is reflected by an express requirement in the Model Form PSC that contractors and sub-contractors are required to give preference to Kenyan materials, supplies and services for use in petroleum operations as long as their prices, quantities and timeliness of delivery are comparable with the prices, quality, quantities and timeliness of delivery of non-Kenyan materials and supplies and a requirement to employ and train nationals. A training programme is to be agreed with the Cabinet Secretary responsible for energy matters.

5. Addressing corruption

The Committee recommended that the State party intensifies its efforts to prosecute cases of corruption and review its sentencing policy for corruption-related offences. It also recommended that the State party train the police and other law enforcement officers, prosecutors and judges on the strict application of anti-corruption laws, conduct awareness-raising campaigns, and ensure the transparency of the conduct of public authorities, in law and in practice.

22. The Government continues to put great effort in strengthening systems in order to reduce incidences of corruption in the country. The Anti-Corruption and Economic Crimes Act (No. 4 of 2003) established the Kenya Anti-Corruption Authority (KACC) as a corporate body to prosecute cases of corruption and economic crimes. KACC was in September 2011 replaced by the Ethics and Anti-Corruption Commission (EACC) established by the Constitution and enabled by the Ethics and Anti-Corruption Commission Act (No. 22 of 2011). EACC has the power to prosecute corruption crimes and confiscate money and wealth obtained corruptly.

23. Kenya has made significant strides in prosecuting cases of corruption as well as training police officers and investigators in prosecuting corruption. In the past, the prosecution of corruption was often impeded by the failure to produce probative evidence that could sustain a conviction. The fight against corruption is today led by EACC under the EACC Act and supported by the Leadership and Integrity Act (No. 19 of 2012). The Leadership and Integrity Act requires vetting of public officers before being appointed to office as well as the removal of public officers from office for corruption.

24. In overall terms, the various anti-corruption bodies have made efforts to prosecute corruption. Since 2002, over 137 corruption cases have been filed and prosecuted in various courts in the country. Although the progress in mounting prosecutions has been significant, lack of evidence to the required standard of proof and the consequent acquittals have been great challenges to the efforts to prosecute corruption suspects. By 2012, there had been over 100 acquittals. The Government is committed to increasing the capacity of officers to identify, investigate and prosecute economic and anti-corruption crimes so that more convictions are sustained.

25. The State continues to utilise its machinery in the fight against corruption. The Constitution has a set of values that all governance institutions must abide by, including the values of good governance, integrity, transparency and accountability (Article 10). The Constitution also lays premium focus on leadership and integrity, including by legislating on the financial probity of leaders as well as their ethical conduct (Chapter 6). The Ethics and Anti-Corruption Commission Act (No. 22 of 2011) establishes a revitalised agency, the Economic and Anti-Corruption Commission, whose functions include investigating acts of corruption and the recovery of corruptly acquired assets.

26. A number of corrupt dealings have been identified and prosecuted during the last few years. For example, Kenya's free primary education (FPE) efforts were pegged back for a while when a few civil servants participated in acts of corruption within the Ministry of Education. These officials though have been prosecuted and in some instances convicted. Related to this, though, the State is greatly concerned that wherever acts of corruption are alleged against State officials, reactions by international agencies funding the country's key development efforts have been to unilaterally stop all funding as a consequence of which beneficiary vulnerable groups have continued to suffer. Kenya's development partners need to nuance their responses against graft claims more smartly to ensure that graft is punished without penalising beneficiaries of development.

27. One final positive note relates to the roles of business in combating corruption. Many Kenyan businesses have now signed up to the Code of Ethics for Business which establishes practical steps to promote and enhance the ethics of business conduct in the country in line with the principles of the UN Global Compact covering human rights, labour standards, environment and anti-corruption.

6. Recognition and protection of diversity

28. Article 7 of the Constitution obliges the State to promote and protect the diversity of language of the people of Kenya. The State is also obliged to promote the development and use of indigenous languages. Article 10 provides that the national values and principles of governance include social justice, inclusiveness, equality and protection of the Marginalised.

29. Article 11 recognizes culture as the foundation of the nation and obliges the State to promote all forms of cultural expression through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage. The State is also obliged to recognize the role of indigenous technologies in the development of the nation. Not only shall the State promote the intellectual property rights of the people of Kenya, Parliament is also required to enact legislation that will ensure communities receive compensation or royalties for the use of their cultures and cultural heritage, and legislation that will also recognize and protect the ownership of indigenous seeds and plant varieties, their genetic and diverse characteristics and their use by communities. Under the Bill of Rights, Article 44 gives every person a right to use the language and participate in the cultural life of his/her choice. The 2009 Kenya Population and Housing Census Report (Kenya Census Report 2009) recognises 51 ethnic groups in

Kenya and includes minority communities that have been omitted from previous census reports.

30. The Constitution under article 232 provides for the values and principles of public service to include representation of Kenya's diverse communities and affording adequate and equal opportunities for appointment, training and advancement, at all levels of the public service of men and women; the members of all ethnic groups and persons with disabilities. This is also reflected in the Laws governing elections and appointment to public offices. Where persons have felt that any public appointment has violated the legal guarantees on diversity, a number of court cases have been filed. Before the end of five years after the promulgation of the Constitution of Kenya, there will be a lot of useful jurisprudence on this issue.

Article 2 – Progressive realization of rights

1. Non-discrimination on various grounds

31. The Constitution guarantees all persons the right to equality and non-discrimination. This right is guaranteed to all persons, whether citizens or non-citizens, and it binds the State as well as corporate entities. A person may not be discriminated on grounds including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth (Article 27).

32. The Kenya 2030 Vision has outlined strategies aimed at moving the country towards substantive equality measures to support regions and groups which have been historically disadvantaged on account of region or status. Under the Vision, for example, education centres of excellence are being established in every constituency of the country. Furthermore, the Constitution has introduced the Equalisation Fund which uses a formula based on levels of poverty to provide basic services such as water, roads, health facilities and electricity in the most marginalised parts of Kenya (Article 204). The constitutionally-established Commission for Revenue Allocation is playing key roles towards this end.

33. The Constitution makes specific mention of groups which are liable to be discriminated on account of their vulnerability, including children, women, persons with disabilities and minorities and marginalised groups. Regarding this last group, the African Commission on Human and Peoples' Rights made a ruling against the State in 2010 (*Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*). The Endorois community successfully argued before the African Commission that the State had violated its rights in the way land traditionally owned by it had been appropriated and used. The African Commission recommended that: Kenya recognises the rights of ownership and ensure restitution of ancestral land to the Endorois community. Further, the Government was asked to ensure unrestricted access for the community to Lake Bogoria for religious, cultural and grazing purposes, and pay adequate compensation and royalties. The State is committed to the implementation of these recommendations, and will be guided principally by independent agencies such as the newly-created Land Commission alongside various Government departments.

2. Addressing Refugees' issues

The Committee recommended that the State party issues work permits to all refugees, in accordance with the Refugees Act (2006) and monitor unfair labour practices and exploitation of refugees in the informal sector. It also recommends that the State party relax its reported policy of requiring refugees to live in camps for prolonged periods of time, and provide hospital services at the same rate to them as to nationals.

34. The country hosts over 600,000 refugees from states in the sub-region which in the last few decades have experienced civil strife. These refugees access all the basic human rights and other rights according to the 1951 Convention relating to the Status of Refugees.

35. There has been growing concern that all those crossing the border into Kenya are not true refuge seekers but illegal immigrants to cause chaos and instability in Kenya. Some are linked to the Islamist Al Shabaab insurgents, who have threatened Kenya in the past. Kenya has suffered several terrorist bombings. The challenge the Government is facing is distinguishing genuine Somali asylum seekers from those persons who may be a threat to the security of the country. Kenya has itself in recent times experienced a spate of insecurity, including shootings and grenade attacks, which have occasionally been perpetrated by persons who have slipped from refugee camps or who slipped into Kenya purportedly as refugees. In 2012, the Government required all refugees in the country to return to their designated camps. Figures from the United Nations High Commissioner for Refugees (UNHCR) indicated that at least 33,000 Somali refugees lived within Kenya's urban settings.

36. While Kenya is unable to retract the policy of requiring refugees to live in the designated camps, as was recommended by the Committee, Kenya, however, ensures that services offered to refugees would continue uninterrupted by asking UNHCR to transfer direct services offered to refugees from urban areas back to the camps. Kenya remains committed to complying with its international obligations relating to refugees and indeed the Refugees Act (No. 13 of 2006) and affirms that every refugee and asylum-seeker will be permitted to remain in the country as long as they comply with the law. In particular, it should be stressed that under the law, refugees' right to wage earning employment is restricted in a similar manner as non-citizens of Kenya.

37. Further, the Kenya military operation, "Linda Nchi" (Defend the Country) which involved military operations to oust the Al Shabaab terror group in Somalia that continued to threaten Kenyan communities along the border regions as well as abduct Kenyans, tourists and foreign aid workers for ransom, has enhanced the prospects for peace in Somalia with the hope that many of the displaced populations will soon be able to return to their country voluntarily.

38. In order to address other outstanding issues on citizenship, Kenya has reformed legislation on citizenship which alongside constitutional provisions on citizenship have changed the legal and policy environment for ensuring the rights of groups which have hitherto faced challenges of proving citizenship. Legislation has resolved concerns raised by the Nubian community to the effect they were treated as second-class citizens or even as stateless persons. This community was brought to Kenya as part of Britain's soldier corps when Kenya was a British colony; but following the country's independence the community was not readily recognised and integrated into the country alongside other communities. The Kenya Citizenship and Immigration Act (No. 12 of 2011) resolves Kenya's statelessness problem by providing for mechanisms to ensure that persons who for one reason or another did not take up citizenship following the country's independence may do that now.

3. Progressive realisation of rights

The Committee recommended that the State party addresses disparities in the enjoyment of economic, social and cultural rights, including in access to land, which particularly affect poor people in urban areas and minority and indigenous communities in rural areas, e.g. by adopting the Draft National Land Policy, establishing land inspectorates to monitor discriminatory allocation of land, and implementing the recommendations of the Ndung'u Commission of Inquiry into Illegal/Irregular Allocation of Public Land. It also recommended that the State party

establish a tribunal on post-election violence to bring perpetrators to justice, as well as a Truth, Justice and Reconciliation Commission to address broader historical injustices, and that it foster dialogue and promote comprehensive reconciliation among its different ethnic groups.

39. The Constitution provides specifically for economic, social and cultural rights. It guarantees every person the rights to: the highest attainable standard of health; accessible and adequate housing; freedom from hunger and having adequate food of acceptable quality; clean and safe water in adequate quantities; social security; and education (Article 43). It requires the State to take legislative, policy and other measures to progressively achieve the realisation of those rights (Article 21). The Constitution also recognises culture as the foundation of the nation in promotion of all forms of national and cultural expression (Article 11) and guarantees everyone the right to language and culture (Article 44).

40. The State has put in place policies and statutes to enable the constitutional provisions covering economic, social and cultural rights. New education laws, including the Basic Education Act (No. 14 of 2013), have been enacted; and a new health laws is also being discussed in alignment with the Constitutional guarantees. Maternity fees have been abolished in all public hospitals. A new policy on housing is also under discussion.

41. The justiciability of economic, social and cultural rights in Kenyan courts is assured in terms of specific Constitutional provisions which provide that international human rights treaties and conventions ratified by Kenya form part of the country's laws (Article 2 (6) of the Constitution of Kenya, 2010.

42. Since August 2010, Kenyan courts have on a number of occasions made positive rulings on economic, social and cultural rights covering matters ranging from the right to health, the right to education, and the right to housing. In one instance, the High Court gave orders to protect petitioners from being evicted while the substance of their case in terms of the right to housing was being heard – *Satrose Ayuma and 11 Others v. Registered Trustees of the Kenya Railways Staff Retirement Benefits Scheme and 2 Others (2011) Eklr*. In another case, the High Court ordered the State to reinstate over 1,000 families back to land from which it had evicted them – *Brahim Sangor Osman v. Minister of State for Provincial Administration and Internal Security and 3 Others (2011) Eklr*. Finally, regarding the right to health, the High Court declared as unconstitutional anticounterfeit legislation which was likely to limit HIV-positive patients from accessing generic and hence cheaper antiretroviral drugs – *PAO and 2 others v. Attorney General (2012) Eklr*.

4. Access to land

43. Land is a key factor of production in Kenya and the majority of the country's population continues to eke livelihoods in the countryside as farmers and pastoralists. Land grievances were a key spur to the country's Mau Mau war for independence from Britain. Inter-communal conflicts have been predicated on the perception that members of certain communities own land which properly should belong to individuals from other communities.

44. The land policy and legislative framework has in the past been managed within multiple laws and regulations. Policy and legal arrangements on land again have shifted dramatically since 2010. The Constitution of Kenya has redefined land ownership under three categories: public land, private land and community land (Chapter 5 of the Constitution). Kenya also has a new land policy, which together with the Constitution forms the bedrock of new land laws that have been passed since 2010. These new laws include: the Land Act (No. 12 of 2012) and the Land Registration Act (No. 3 of 2012). In February 2013, the Land Commission was made operational with key functions such as

managing public land, advising on registration of land, investigating present or historical land injustices, and undertaking land tax assessments. Finally, a key aspect of judicial reform involved establishing the Land and Environment Court to focus specifically on land and environmental issues – Environment Land and Court Act (No. 19 of 2011). These initiatives will set the pace for long-term reforms aimed at ensuring equitable access to land for all Kenyans.

5. Efforts towards National unity and reconciliation

(a) The National Cohesion and Integration Act, 2008

45. Recognizing the need to consolidate national cohesion as a prerequisite for national development, the leadership (in the face of the post 2007 presidential election dispute) committed itself to establishing a framework for the promotion of equality of opportunity, good relations, harmony and peaceful co-existence between different ethnic and racial communities of Kenya. This framework was established through the National Cohesion and Integration Act which became operational on March 9, 2009. The main objective of this legislation is to prohibit discriminatory and other conduct that might prejudice harmonious and peaceful co-existence of persons from various ethnic groups in Kenya. In this regard, the Act prohibits discrimination on the grounds of ethnicity, race, colour, religion, nationality or origin in both the private and public spheres of national life and prohibits hate speech and other conduct that may fan ethnic or racial animosity.

46. It was envisaged that the Act would be enforced through three main mechanisms, namely: (i) the criminal justice system; (ii) the complaints and referral system set under the Act; and (iii) the NCIC. The Act brings itself under the purview of the criminal justice system by defining offences and prescribing sanctions for violation. The police therefore have a central role to play in apprehending and prosecuting those who are suspected to have committed the offences defined in the Act. A complaints and referral system is also established and consequently, a victim of discriminatory practice may lodge a complaint to the Commission for hearing and determination. Where the Commission determines that a complaint has merit, it may either refer the matter to its Secretary for conciliation or altogether hear the matter and issue compliance notices where wrong doing is established. In the hearing and determination of complaints, the Commission has power to summon witnesses and to demand production of information or other material relevant to the proceedings. Under the Act, the Minister responsible for national cohesion may also refer matters of a public nature to the Commission for determination.

47. The Commission is the principal institution for the enforcement of the Act and is established under section 25. Its overall objective is "to facilitate and promote equality of opportunity, good relations, harmony and peaceful co-existence between persons of different ethnic and racial communities of Kenya, and to advise the Government on all aspects thereof".

(b) Establishment of the Truth Justice and Reconciliation Commission (TJRC)

48. The Truth, Justice and Reconciliation Commission is established under the Truth Justice and Reconciliation Commission Act No. 6 of 2008. It is one of the commissions created under Agenda Four of the National Accord signed in 2008 to address the cause and effects of long term historical injustices and gross violations of human rights. The Commission's work is expected to contribute towards national unity, reconciliation, and healing in addition to driving the transitional justice agenda. The specific mandates of the Commission are:

- Promotion of peace, justice, national unity, healing, reconciliation and dignity among the people of Kenya;

- Inquire into and investigate historical injustices and gross human rights violations, including violations of socio-economic rights that occurred in Kenya between 12 December 1963 and 28 February 2008.

49. The Commission was inaugurated on 3 August 2009 and comprised nine Commissioners. It had an initial two year operational period proceeded by a preparatory period of three months. However, owing to numerous take-of challenges including inadequate financing and internal wrangles, the Commission effectively began its work in November 2010, one year and four months after its inauguration. On 21st May, 2013, the Commission finally submitted its report to H.E. the President pursuant to section 48(1) of the Act.

50. The Commission conducted hearings throughout the Country with a view to recording the personal truths of victims and witnesses. Its work was structured around four key deliverables – Statement taking, hearings, reconciliation initiatives and the writing of the Final Report. In its first phase of hearings which went up to 2012, the Commission conducted 220 individual hearing sessions during which more than 680 individuals testified. It also:

- Recorded a total of 42,098 statements from across the country. This is the largest number of statements ever collected by any truth commission world over;
- Recorded special statements targeting children and women;
- Collected a total of 1,529 memoranda from communities and associations across the country;
- Establishment of an electronic database thus easing storage, preservation and retrieval of vast volumes of information for posterity and future reference;
- Collected thematic-based hearings. In this respect:
    - 81 nation-wide focused-group discussions were held, gathering information on perceptions of economic marginalization and in which 1,192 individuals participated;
    - 10 nation-wide reconciliation meetings in which the Commission fostered intra and inter-community dialogue on national healing and reconciliation;
    - Adversely mentioned persons hearings;
    - Amnesty and reparations hearings.

51. On the basis of the above primary findings, the Commission has made the following recommendations in line with section 48(2) b-f of the Act:

- Public and unconditional apologies to be tendered within six months of this report by the President and the national security agencies for all injustices and gross violations of human rights committed during the mandate period;
- Kenya government to enter into negotiations with the British Government within the next 12 months with a view to securing compensation for victims of atrocities and injustices committed during the colonial period;
- Creation of a national human rights day to promote human rights in Kenya;
- Fast tracking of the establishment of the international crimes division of the court by the Judiciary to try cases recommended for prosecution;
- Fast tracking enactment of human rights related laws as envisaged by the Constitution;

- Ministry of Justice to fast track the expansion of National Legal Aid and Education Programme (NALEAP) to cover the entire country;
- Prosecution of human rights violators/perpetrators;
- Fresh investigations into past unresolved murders of J.M. Kariuki, Tom Mboya, Chrispine Mbai, Robert Ouko, Pinto, among others;
- Release to the public of reports of past Commissions of Inquiry; and
- Investigations into and recovery of illegally/irregularly acquired land by the National Land Commission.

(c) Dealing with the post 2007 election violence

52. The post-election violence of 2007 raised issues that remain matters of great concern to the people of Kenya. Various State initiatives have been deployed since 2008 to ensure that such violence would never recur. Key institutions were set up to investigate, to identify the deep challenges of the situation and to recommend actions towards healing and cohesion of the whole country. These include, the Commission for Investigating the Post-Election Violence, the Truth, Justice and Reconciliation Commission, the Witness Protection Agency, and the National Cohesion and Integration Commission. The Judiciary has also been reformed and retooled significantly. These reforms include establishment of the Supreme Court, and vetting of judges and magistrates to determine their suitability to continue serving as judicial officers under the Constitution, among other measures. It is largely due to these reforms that Kenya had peaceful general elections on 4 March 2013. Where results were disputed, parties took the issues to court, demonstrating renewed confidence in the Judiciary as an impartial arbiter.

53. Bringing to book perpetrators of the violence in 2007 and 2008 remains a national priority. Kenya has cooperated fully with the ICC in respect of the three individuals standing trial on counts of crimes against humanity before the International Criminal Court. In 2012, the Director of Public Prosecutions (DPP) established a task force to determine the veracity of available evidence so as to proceed with trials against other alleged perpetrators of the 2007 post-election violence in Kenyan courts. The Judiciary has also establishing an International Crimes Division in the High Court.

54. With regard to internally displaced persons, the State established an initiative to finance displaced persons either to return to where they were displaced from or to settle in new areas. In the meantime, the State has established a new policy and legal framework to deal with issues of internally displaced persons. Among other things, the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act (No. 56 of 2012) establishes a rights-based response to internal displacement. This law stresses Kenya's international human rights obligations by explicitly giving effect to the Great Lakes Protocol on the Protection of and Assistance to Internally Displaced Persons, as well as the United Nations Guiding Principles on Internal Displacement.

Article 3 – Non-discrimination and equality

1. Steps to eliminate direct and indirect discrimination based on sex

The Committee recommended that the State party repeal Article 82 (4) of the Constitution and ensure that the new Constitution guarantees equal rights of women to matrimonial property during marriage and at its dissolution. It also recommended that the State party raise public awareness of the need to abolish laws and customs which discriminate against women and adopt the Marriage, Matrimonial Property and Gender Equality and Affirmative Action Bills.

55. The Constitution of Kenya, 2010, guarantees equal rights to women and men and outlaws discrimination on the ground of sex. It obligates the State to take legislative and other measures to redress disadvantage suffered by women and other vulnerable and marginalised groups. The Constitution also offers better clarity on matters of personal law such as marriage, divorce and inheritance. Specifically, it provides that: "Parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage" (Article 45 (3)). While Parliament may still legislate for marriages in terms of different religious or customary traditions, such marriages have to abide by the provision relating to equal rights.

56. Protecting the right to equality for both women and men has also been enhanced following the establishment of the NGEC by the National Gender and Equality Commission Act (No. 15 of 2011). This constitutional Commission's mandate includes ensuring that the State puts in place policies, programmes and measures for gender equality and freedom from discrimination in private and government institution, and further, to audit realisation of the equality and non-discrimination principles.

57. The State has affected the Committee's recommendation that it should repeal Section 38 of the Sexual Offenses Act (No. 3 of 2006) which punished victims of sex crimes whose cases were prosecuted unsuccessfully. At the same time, though, a number of gender facilitative bills including the marriage bills, have for years remained unlegislated, it is now expected that since women's voices will be greater in the new Senate and National Assembly, these bills will be given more premium.

58. Other actions which the State has taken against discrimination on the ground of sex include:

- Passage of the Prohibition of Female Genital Mutilation Act (No. 32 of 2011);
- Establishment of hotlines to report gender based violence;
- Better recognition of how discrimination intersects within the lives of women with disabilities in terms of the Convention on the Rights of Persons with Disabilities which Kenya ratified in 2008;
- Ratification of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa;
- Judicial decisions favourable to the rights of women and men, for example on the continued use of generic antiretroviral drugs – *PAO and 2 others v. Attorney General (2012) Eklr*;
- Progress dealing with the reproductive health rights of women, particularly following the Constitution's provision that abortion may be allowed under certain limited and regulated circumstances (Article 26); and
- Enacting land laws including the Land Act (No. 12 of 2012) and the Land Registration Act (No. 3 of 2012 which increase women's access to land ownership and use, through inheritance and through personal acquisition.

59. A systemic key challenge facing implementation of equal rights for women and men is that, despite any clarity in the law, Kenya's cultural and societal realities still mean that women are de facto discriminated in fields such as inheritance. Many women still do not enforce their right to inherit alongside their male siblings in deference to the assumed patriarchal cultural norm; and women do remain in demeaning relationships. A further challenge arises owing to recent emphasis on the rights of women as distinct to gender rights. There is increasing concern that adequate focus is not being placed on the rights of men and the boy-child. Far too many young men in some parts of Kenya are living lives of

wanton wastage: they dabble in drugs and are devoid of drive to earn income; and they no longer play their social roles in the family and community.

2. Representation of women

The Committee recommended that the State party adopts positive measures, with a view to raising the representation of women in Parliament, the judiciary and senior civil service positions.

60. Representation of women in political offices is now specifically provided for in the Constitution. The Constitution provides that at least a third of members of the Senate, National Assembly and County Assemblies be of either gender. To fill the women's minimum quota, the Constitution reserved 47 women seats in the National Assembly and 16 such seats in the Senate.

61. Implementing the gender parity rule in the Constitution, which directs that not more than two-thirds of any elected body should be made up of more than one gender, has faced some challenges. Kenya's 10th Parliament was unable to pass legislation to determine how that rule would be realised. When the Attorney General sought an advisory opinion from the Supreme Court, it determined by majority decision that while realisation of the right is progressive, implementation of the two-thirds rule should be resolved by law at the latest by 2015. *Advisory Opinions Application 2 of 2012, Supreme Court of Kenya.*

62. Kenya's reforming Judiciary includes far more women than ever before. Two of the seven Supreme Court judges are women. Finally, more senior civil servants are women holding critical decision-making positions in important bodies such as the National Gender and Equality Commission, the Commission for the Implementation of the Constitution, and the Commission for Revenue Allocation. The data is available from Kenya' 7th report to CEDAW.

Article 6 – Right to work

63. The State is extremely conscious of the eminent role that work plays in the lives of Kenyans. Work facilitates a host of other rights – from the right to be free from hunger, the right to housing and the right to education. Ultimate State policies continue to be informed by the fact that a person may not live a dignified life if he or she does not have work. The importance of this right is affirmed by the fact that Kenya has ratified 49 International Labour Organization (ILO) Conventions, including seven of the eight Fundamental Conventions; three of four Governance Conventions (Priority); and 39 of the 177 Technical Conventions. The State is even enforcing the spirit of many of the other ILO Conventions which it has not ratified as discussed further in this report.

1. Opportunities for employment

64. Despite not being explicitly provided for in the Constitution, the right to work still features strongly in Kenya's policy, legal and administrative framework. The right to work, as enunciated in Article 6 of the ICESCR, is directly enforceable by virtue of Article 2 (6) of the Constitution which provides that treaties or conventions ratified by Kenya do form part of the country's laws. The Constitution itself alludes to the right to work when it affirms every person's inherent dignity and the right to have that dignity respected and protected (Article 28). Furthermore, migrant workers' rights are protected in the Employment Act (No. 11 of 2007).

65. The State realises that work opportunities will keep growing if the economy's competitiveness is enhanced. The country's long-term development blueprint, the *Kenya Vision 2030*, identifies work as a critical component of the economic pillar, stressing that

social cohesion may not be attained when significant segments of the population remain in abject poverty.

2. Employment creation

The Committee recommended that the State party intensifies its efforts, especially in rural and deprived urban areas, to (a) achieve higher levels of employment, e.g. through vocational training and infrastructural measures; (b) regularize the situation of informal sector workers by progressively improving their working conditions and including them in social security schemes; (c) take special measures to increase employment opportunities for women, persons with disabilities, refugees and internally displaced persons and other disadvantaged and marginalized groups; (d) ensure that labour inspectors act as an independent and effective instrument to combat violations of basic labour rights; and (e) establish a data collection system to monitor unemployment and informal sector employment.

66. During the last four years, the State has started implementing initiatives intended to create opportunities for the poor to create wealth. New jobs have been generated both in the formal and informal sectors between 2008 and 2012. In 2008, over 474,700 new jobs were generated. In the 2009/2010 financial year, the number rose to 502,900 and went up further to 503,500 in the 2010/2011 financial year.[1] The formal sector generated 62,600 new jobs in 2010 compared to 56,300 jobs created in 2009 representing 12.4 per cent of the total jobs generated. The informal sector, which represented 80.6 per cent of the total employment, generated an additional 440,900 jobs. The increase in the generation of jobs is attributed to improved economic performance coupled with increased access to cheaper credit from banks, and from the Women Enterprise Fund and the Youth Development Fund.

67. Ultimately, the Kenya 2030 Vision aims to establish a sustained gross domestic product (GDP) rate of 10 per cent to drive wealth-creation. In 2012, the Government expected the economy to grow by 5.1 per cent. Economic growth targets for the next few years are, at 10 per cent. The next Medium Term Plan of the *Vision 2030* (MTP 2013-2018) aims to raise the average annual income per person from USD 901 in 2012 to USD 1,200 by 2017; and to reduce national poverty levels from 44 per cent in 2012 to 28 per cent in 2017. See further discussions in the report.

68. The State continues to appreciate the key role that properly targeted training plays in ensuring that a properly skilled and tooled labour-force can fit into available work opportunities as well as innovate new such opportunities. The State has continued to invest heavily in training initiatives during the last four years. See discussion on investments in education.

69. Kenya's unemployment rate in 2011 was 40 per cent, up from 12.70 per cent in 2006. The State still faces the challenge of not only how to create jobs but how to establish sustainable jobs which comply with minimum labour standards; and how to balance between formal employment and employment within the informal sector. Opportunities for formal sector jobs remain far more limited than opportunities for informal sector jobs. By 2010, formal sector jobs compared to informal sector jobs had shrunk to 18.8 per cent.

70. State agencies strive to ensure that minimum work standards apply within the informal sector. The situation of workers in informal employment is gradually being improved through their inclusion in social protection schemes and health schemes. For example, now, even workers with minimal earnings can become members of the National Hospital Insurance Fund (NHIF).

[1] See the Second Medium Term Plan 2008 – 2012 Report.

71. A number of other policies, laws and administrative actions have or are being taken to establish more work opportunities:

- The State instituted the Kazi Kwa Vijana Programme (Jobs for the Youth) in 2009. This initiative aimed to employ 200,000 to 300,000 Kenyan youth in public works initiatives: when it ended, it had employed 298,000 youth. The Initiative though created fairly short-term jobs (usually not more than three months) and faced challenges of accountability. The State established the Youth Enterprise Development Fund to provide business development loans to young people aged 18 to 35 to enable them to form viable businesses that would create jobs.
- The State also established the Women's Enterprise Fund with similar aims.
- Enhancing opportunities to work for persons with disabilities has involved encouraging employers to hire at least five per cent employees with disabilities. The reality in this regard though is that extremely few persons with disabilities are hired by the public and private sectors, owing to a mix of factors including prejudice and discrimination and non-availability of qualified persons with disabilities.

72. Job-creation strategies under the next MTP include:

- Establishing a national poverty centre for mapping and providing policy advice on how to deal with poverty;
- Establishing a national integrated framework for employment-creation and social protection to provide an integrated approach for employment creation and social protection;
- Developing four multi-purpose dams for sustainable utilisation and management of basin based resources;
- The Youth Enterprise Development Fund will establish a Youth Bank;
- Entrepreneurial training will be enhanced since it is a key element in successful financial assistance programmes;
- The Women Enterprise Development Fund will continue to lend funds to women enterprises through financial intermediaries. It will also train women on formation of cooperatives and financial management.

73. Kenya's on going judicial reforms have also positively impacted the labour sector greatly. Courts have for example intervened to protect the right to work of a police officer who was retired "on medical grounds" when he got a physical disability, the High Court ruling that the employer should rather have reassigned the petitioner and instituted reasonable accommodation measures to enable him continue working as a police officer – *Anupa and Kenya Paraplegic Organisation v. Attorney General and Judicial Service Commission, High Court Petition 93 of 2011.*

74. The right to work remains extremely tenuous for certain sections of society. Despite provisions in the Constitution of Kenya and the Persons with Disabilities Act (No. 12 of 2003), employment opportunities for persons with disabilities remain extremely limited. Ensuring the right to work for women also remains a challenge; as indeed is ensuring that the right environment exists to enable youth to become gainfully employed.

Article 7 – Right to just and favourable conditions of work

1. Just and favourable conditions of work

75. Ensuring decent work conditions for Kenya's workers remains an essential part of the country's policy-making and implementation. The Constitution of Kenya establishes every worker's rights to: fair remuneration; reasonable working conditions; membership of a trade union; and to strike. The Employment Act (No. 11 of 2007) complements the Constitution by detailing the fundamental rights of employees as well as providing for basic conditions of employment. It forbids forced labour; provides for equality of opportunity in employment; outlaws discrimination; legislates for equal remuneration for work of equal value; and protects against sexual harassment.

2. Export processing zones

The Committee recommended that the State party reviews its incentive regime for Export Processing Zones, removes their exemption from Kenyan labour legislation, including the Employment Act, the Occupational Health and Safety Act and minimum wage regulations, strictly enforce labour standards and further increase the number of labour inspections, promote training and promotion opportunities for workers, ensure trade union freedom and combat sexual harassment and racial discrimination in the Export Processing Zones.

76. It is important to state that the export processing zones are not exempt from the application of labour laws. The Employment Act (No. 11 of 2007) as well as the Occupational Health and Safety Act (No. 15 of 2007) apply in export processing zones as much as they apply to employers outside such zones. Only the disciplined forces are excluded from the ambit of the Employment Act; and even in that instance, the Constitution establishes clear minimum requirements to ensure their rights at work. The State however faces the challenge of effective implementation: adequate resources are not available to deploy enough labour inspectors to the numerous cites where workers' rights do keep being violated.

3. Statutory minimum wage

The Committee recommends that the State party increase, annually adjust and enforce minimum wages to ensure that such wages provide workers with an adequate standard of living for themselves and their families, in accordance with article 7 (a) (ii) of the Covenant. It also recommends that the State party adopt targeted measures to ensure that women, especially those living in rural and deprived urban areas, have equal access to the regular labour market as men and that the principle of equal remuneration for work of equal value is implemented in practice.

77. The State undertakes on an annual basis a review of the minimum wage applicable to different cadre of workers. Under the Labour Institutions Act (No. 12) of 2007, the Government constitutes Wages Councils to deal with emerging sectors of the economy. These include: the Protective Security Services Wages Council which was reconstituted in August 2012 to take care of the workers in the private security sector. In addition the Floricultural Wages Council continues to address issues affecting workers in the flower industry. The State has taken concerted actions to ensure that domestic workers who tend to be particularly vulnerable do get a minimum wage.

78. The State recognises the difficulty of balancing demands for an adequate standard of living on one hand and the imperative not to so overburden the economy that would grind production to a halt. To remedy this situation, the State is developing the Incomes and Wages Policy and the Productivity Policy. The Constitution also established the Salaries

and Remuneration Commission whose functions include setting and reviewing the remuneration and benefits of all State officers (Article 230 of the Constitution). In January 2013, that Commission proposed realignments in the public service salaries structure including modest reductions to salaries of the best-paid public officers. Under their new scheme, the disparity between the highest and lowest paid officer has reduced from 159 per cent to 87 per cent, against a world standard of 50 per cent.

4. Women

79. By and large, women do continue to work in low-skilled and low-paid jobs. Correcting this situation involves a series of short, medium and long-term interventions. The policy and legislative environment now affirms that women and men working in similar jobs have similar rights to pay and other terms. In the medium and long-term, State initiatives like compulsory free primary education (FPE) will produce a female labour force with skills equivalent to their male peers. The State also encourages employers to recognise the importance of taking into account women's roles as child-bearers and caretakers by introducing facilities and flexibilities in the work-place that encourage women to continue working even as they nurture young children. Some private corporations have begun to institute facilities such as crèches for children.

80. Representation of women in senior management jobs such as Corporate boards remains negligible. In 2012, only 9 per cent of directorships for companies listed on the Nairobi Stock Exchange were constituted by women. This percentage compared unfavourably with 2007 when there was 12 per cent representation. Kenya's Capital Markets Authority is considering introducing quotas to ensure women are represented on the boards of companies listed on the Stock Exchange.

5. ILO Convention

81. Kenya has not acceded to ILO Convention 150 concerning Labour Administration. But the country has a strong Labour Inspectorate Department whose operations are limited only on account of the scarcity of resources facing State institutions.

Article 8 – Right to form and join trade unions

82. Kenya continues to believe that the principles of tripartite agreements help to drive the country's socio-economy and provide benefits to workers. Trade unions play essential roles which the State should never undermine.

1. Trade unions and employers' organisations

83. Significantly, Kenya's policy and legislative priorities in this area revolve around ensuring amicable and mutually beneficial labour relations. That is why the Constitution establishes every person's right to fair labour practices. Not only does it provide for workers' rights, it also provides for employers' rights, including: forming and joining an employers' organisation; and participating in the activities and affairs of such organisation. Both employers' organisations and trade unions have rights to: organise; form or join a federation; and undertake collective bargaining (Article 41). The right to labour relations may only be limited for persons serving in the Kenya Defence Forces or the National Police Service (Article 24).

2. Right to form trade unions

The Committee recommends that the State party take urgent measures to ensure freedom to form and join trade unions, prevent interference in the management and

operation of trade unions, and remove excessive restrictions on the right to strike in law and in practice, including in Export Processing Zones. While noting the importance attached to the principles of Tripartism and social dialogue by the State party, the Committee recommends that the State party consider ratifying ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise (1948).

84. The Constitution of Kenya, complemented by the Labour Relations Act (No. 14) of 2007, guarantees workers the right to industrial actions. Since the promulgation of the 2010 Constitution, Kenya's public and private sectors have increasingly exercised their right to withhold labour. Indeed, employers are increasingly concerned that certain industrial actions, like strikes have proceeded without proper due process. Doctors and nurses have gone on strike in circumstances which have led to the death of hospitalised patients.

85. In addition, since the passage of the Constitution of Kenya, 2010, trade union activities in the country have flourished. Unions representing civil servants, teachers, health workers and the services sector, among others, have engaged their employers robustly to improve the terms and conditions of their members. Trade unions have argued their grievances in court and many times gotten the redress they sought. For example, in *Aviation and Airport Services Workers Union v. Kenya Airways Ltd (2012) Eklr*, the Industrial Court reinstated 447 workers who Kenya Airways had declared redundant, the Court determining that the retrenchment and redundancy actions by Kenya Airways were substantively without justification and procedurally wrong, amounting to unfair termination of employment. Kenya Airways has appealed the ruling. In addition, the Court ordered that the nurses union be registered by the Trade Unions.

86. Two federations of trade unions now operate in the country: the Central Organisation of Trade Unions and the Confederation of Public Service Trade Unions of Kenya. The Registrar of Trade Unions has, as per law on several occasions declined to register trade unions where the substantial interests of members of the proposed unions were already represented by already existing unions. The State continues to cherish the fact that even where its officials do make decisions not to register a trade union, those decisions can be reviewed in this instance by the Industrial Court where a number of aggrieved applicants have lodged their claims for registration.

87. Kenya has still not ratified ILO Convention 87 concerning Freedom of Association and Protection of the Right to Organise. The State's view in this regard is that the Constitution and enabling legislation are quite adequate to cover association rights.

Article 9 – Right to social security

88. The State recognises how essential it is to ensure vulnerable groups like children, older persons and persons with disabilities do access amenities of life such as food and shelter. Social protection measures continue to be an essential tool for advancing this protection.

1. Social protection

89. The Constitution establishes the right to social security as a socio-economic right to be achieved progressively (Articles 43 and 21). The Constitution in particular identifies persons who are vulnerable as ones that should receive social protection from the State on a priority basis. The National Social Protection Policy has sought to respond to this constitutional imperative through the use of the following instruments to deliver social protection to the poor and vulnerable:

- Cash transfers: The State has to date rolled out cash transfer programmes to cover older persons, orphans and vulnerable children (OVCs), and persons with severe disabilities. During the last four years, money has been allocated on an annually increasing basis to each of these groups to be transferred to individual households across the country. A challenge that has faced the use of this instrument is the scarcity of resources which has meant that deserving households have been left unserved by the strategy. A further challenge has been in the transmission of the cash to the OVCs families due to the distance from and lack of access to banks and formal financial institutions. However, to mitigate the challenge and increase access, since 2010 the Government began to transmit the money through the local Post Offices which are closer to the people in rural areas and require less technical details for issuing money.

- Food distribution (either as disaster relief or in-kind transfers): Kenya from time to time has continued to suffer droughts and even famine. Whenever this has happened, the State has itself alongside civil society and the international community mobilised resources to provide food to needy regions.

- Direct feeding programmes: These target those especially vulnerable to malnutrition. The State has used its health bureaucracy to distribute nutrient-rich food supplements such as Unimix to malnourished children and lactating mothers.

- School-based food programmes: School feeding programmes remain an effective tool particularly in Kenya's vast arid and semiarid areas where a hot meal is provided to pupils in schools. This programme has the effect both of providing nutrients to children as well as getting them to have an education.

- Micro-finance (both credit and savings): As we have already stated, the State has rolled out a number of programmes to motivate development amongst the youth, women and persons with disabilities.

- Price subsidies (food at lower than market rates and subsidies of common utilities like water and electricity: The Price Control (Essential Goods) Act (No. 26 of 2011) was passed with the aim of regulating the prices of essential commodities so as to secure their availability at reasonable prices. It is the case though really that the effects of this law have not begun to be felt by the populace. Kenya's economic priorities have become so neoliberal that it is difficult for the Government to negotiate commodity price reductions.

- Subsidised agricultural inputs: Essential agricultural inputs like fertilizers and herbicides have on a limited basis been subsidised by the State. This has been beneficial to small-scale farmers, although brokers have abused the system by buying, marking up and selling subsidised inputs.

- Public works programmes: The State from time to time has undertaken work-for-food programmes under which individuals from communities have built local infrastructure such as roads. These not only transfer short-term wages and food, but also enable construction of necessary public infrastructure. As already reported, one such programme instituted by the State was the Kazi Kwa Vijana (jobs for youth) initiative.

- Waivers and exemptions: These enable the vulnerable to access services. Children under five years get free basic health services. Kenyan children continue to enjoy FPE. A certain percentage of the income of persons with disabilities is also tax exempt.

90. The OVCs cash transfer programme began on a pilot basis in three districts; but presently it covers Kenya's 47 Counties and targets 155,000 households. The budget allocated to the programme in the last few years is as follows:

- 2006-2007: Kshs 48 million;
- 2007-2008: Kshs 56 million;
- 2008-2009. Kshs 169 million;
- 2009-2010: Kshs 579 million;
- 2010-2011: Kshs 816 million;
- 2011-2012 Kshs 3,224,280,000.

91. The Government is supporting over 2.4 million OVCs in over 154,000 households nationally. The added support of FPE has reduced significantly the costs to individual households caring for OVCs and ensured that OVCs have access to primary education at the least. The Government promotes community care over institutionalised care of OVCs in order to promote the overall welfare of the children who are already in difficult circumstances.

2. The National Hospital Insurance Fund (NHIF)

The Committee recommends that the State party progressively extend the scope of the National Hospital Insurance Fund so as to reimburse all hospitalization costs, in particular medical expenses, and to cover all workers, including informal, casual, domestic and part-time workers and the self-employed, as well as persons without employment. As a first step, it recommends that the State party consider removing any penalties imposed on persons who are unable to pay their contributions on time. It also recommends that the State party take immediate steps to introduce a comprehensive compulsory health insurance scheme for everyone, including the unemployed, children, older persons, persons with disabilities and other disadvantaged and marginalized individuals and groups.

92. Measures now have been put in place to turn NHIF into a fully-fledged health insurance scheme which will pay for all health-related costs. The base for the Fund is also being expanded by facilitating members to make more reasonable contributions in return for advanced benefits. It is also tapping new members from the informal sector. Both casual and part-time as well as self-employed persons can now become members of the fund. Penalties for late payment still remain. A comprehensive health scheme for all remains under discussion; but the Government has put in place a health scheme for all public servants as discussed elsewhere in the report.

93. Kenya has not ratified ILO Convention 102 concerning Minimum Standards of Social Security. Sustaining Kenya's social protection programmes faces challenges arising from the low number of people being taxed relative to the number of people in need of social protection. The State aims to expand its tax base by reaching out to the informal sector so that individuals in that sector too may pay taxes. The private sector too is a key partner in building the tax base to ensure minimum social protection standards.

Article 10 – Protection of the Family

94. Kenya continues to make positive strides in legislative and policy measures aimed at protecting the family as the natural and basic unit of society. The Constitution provides legal recognition of the family as the fundamental unit of society and the rights to found families and to enjoy equal rights in entering into a marriage, during the marriage and upon

dissolution of the marriage. The Constitution protects the rights of adult persons of opposite sexes to found a family based on free consent of the parties, and defines "adult" as a person who has attained 18 years. This is reaffirmed in the Children's Act (No. 8 of 2001).

95. Kenya recognises and promotes the family as the fundamental unit of society. The Government is committed to promoting the welfare of the family, which is critical in the realisation of the economic, social and cultural rights for individuals. At the same time, the Government recognises that the overall health of families affects the overall health of the country.

1. Towards legislation to protect the family

The Committee recommended that the State party (a) enact the Domestic Violence (Family Protection) Bill (2000) and other legislation specifically criminalizing domestic violence, including spousal rape, and customary practices that degrade and harm women, including ritual "cleansing" and forced "inheritance" of widows; (b) train the police, prosecutors and judges on the strict application of such criminal law provisions; (c) relax the sanctions for false allegations in Section 38 of the Sexual Offences Act (2006) and preclude its application in cases where acquittals are not necessarily based on the falseness of the complainant's allegations; (d) raise public awareness, in particular at the community level, about the criminal nature of domestic violence and harmful customary practices; and (e) provide in its second periodic report updated data on the number and nature of reported cases of domestic and sexual violence, convictions and on the sanctions imposed on perpetrators.

96. The Government has drafted three family law bills – the Marriage Bill 2012, the Matrimonial Property Bill 2012 and the Protection Against Domestic Violence Bill 2012 – to give effect to the constitutionally guaranteed rights of the family. The Bills are expected to be enacted into law in the 11th Parliament. The Marriage Bill 2012 has incorporated some of the gains introduced by the Constitution. Specifically, the Bill consolidates the eight existing marriage laws (The Marriage Act, The African Christian Marriage and Divorce Act, The Matrimonial Causes Act, the Subordinate Courts (Separation and Maintenance) Act, The Mohammedan Marriage and Divorce Registration Act, The Mohammedan Marriage, Divorce and Succession Act and the Hindu Marriage and Divorce Act) under one law. The Bill affirms that parties to a marriage have equal rights at the time of marriage, during the marriage and upon dissolution of the marriage. The inequalities often experienced in marriages concluded under customary law will be minimised by the provision of registration and legal recognition of customary marriages under the Marriage Bill. The Marriage Bill when enacted will also recognise cohabitation marriages or popularly known as come-we-stay marriages, which are otherwise not legally recognized and many women have lost rights within the marriage through these unions.

97. The proposed Matrimonial Property Bill makes significant gains in securing women's access to matrimonial property during and after the marriage. Married women in Kenya have been at a disadvantage when it comes to matrimonial and family property, due to cultural practices that prioritise men's claims over land and property over women's claims. The Matrimonial Property Bill protects property acquired during the existence of a marriage from being disposed of by one party without the consent of the other party. This has been a significant factor in disenfranchising women. However, considering that this proposed law challenges deeply held cultural beliefs and patriarchal attitudes that have not shifted significantly, the proposed law may face significant opposition in Parliament. The Government will continue to push for its enactment including direct intervention with Members of Parliament so that the final Act promotes the equity and equality for women and men.

98. The Government is also pleased to report that the Committee's concern in the Concluding Observations regarding Section 38 of the Sexual Offences Act (No. 3 of 2006) which introduced sanctions for false allegations, which also affected cases where acquittals resulted from prosecutions, has now been repealed.

2. Combating under age marriage and female genital mutilation (FGM)

The Committee recommended that the State party adopts legislation criminalizing all female genital mutilation of adult women; train the police, prosecutors and judges on the strict application of laws prohibiting female genital mutilation; continue promoting alternative rite of passage ceremonies; educate parents, especially mothers, children and community leaders on the harmful effects of female genital mutilation; and combat traditional beliefs about the usefulness of female genital mutilation for the promotion of marriage prospects of girls.

99. Under age marriage remains a challenge arising mainly due to poverty and lack of economic opportunities for girls especially in rural areas, cultural beliefs and practices as well as religious beliefs. However, the situation has steadily improved since 2003. The 2008/2009 Kenya Demographic and Health Survey indicates that in the population cluster of women aged between 45 and 49 years, about 10 per cent were married when below 18 years while in the current cluster of girls aged between 15 and 19 years, only 2 per cent are married under age 18. Further, the median age for marriage shifted upwards from 19.7 years in 2003 to 20 years by 2008. The introduction of compulsory free primary education in 2003 is among the factors that have decreased the incidence of early marriages. The Basic Education Act (No. 14 of 2013) promotes the extension of compulsory education to secondary school. As the Act is implemented, the country expects to see a further decline in the number of early marriages.

100. Similarly, FGM is on the decline across the country. The 2008/2009 Kenya Demographic and Health Survey indicated that 27 per cent of women between the age of 15 and 49 had undergone FGM. This is down from the 2003 survey, which indicated an incidence rate of 32 per cent, and the 1999 survey that indicated 38 per cent. This decline indicates improved quality of life and health for girls and women. In addition, because FGM is linked to early marriage, the decline in rates indicates that many more girls are avoiding early marriages and completing their primary and even secondary education. Regional disparities are, however, very wide with areas of North Eastern Kenya indicating prevalence as high as 98 per cent.

Table 1
Prevalence of FGM by regions

Region	*Estimated prevalence at 2008/2009 (by % of women population)*
Western region	1%
Eastern region	30-33%
Nyanza region	30-33%
Rift Valley region	30-33%
Central region	25%
Nairobi region	10%
Coastal region	15%
North Eastern region	98%

Source: Kenya Demographic and Health Survey 2008/2009: p.264.

101. In 2011, Kenya enacted the Prohibition of Female Genital Mutilation Act (No. 32 of 2011). The FGM Act establishes an Anti-FGM Board, which focuses on education and promoting awareness, designs programmes aimed at eradication, and supports alternative rites of passage. Further, the Constitution prohibits a person from to compelling another to perform, observe or undergo any cultural practice or rite (Article 44).

102. The Act makes it an offence to perform FGM on another and also to train as an FGM practitioner. Persons convicted are liable to prison terms not exceeding three years or a fine or both. Where death results from FGM, the convicted person is liable for life imprisonment. While the Act provides deterrent sentencing for offenders, the Government focuses on and emphasises the role of education, awareness and behaviour change to bring an end to the practice. Such an approach not only complements the legal measures that must be put in place, but also creates greater opportunities for behaviour change with positive impacts from generation to generation as communities become more aware of the disadvantages of FGM.

3. Counter trafficking measures

The Committee recommended that the State party (a) enacts the Anti-Trafficking Bill (2007); (b) train police officers, prosecutors judges and health and social workers, on the strict application of the provisions of the Sexual Offences Act (2006) and the Children Act (2001) criminalizing trafficking of persons for the purpose of sexual exploitation and trafficking of children; (c) review its sentencing policy for trafficking-related offences; and (d) provide in its second periodic report updated data on the number and nature of reported cases of trafficking, convictions and on the sanctions imposed on traffickers.

103. In Kenya the problem of trafficking in persons particularly affects the country as a major host for asylum seekers and refugees and a travel hub within the East African region. Women and children are particularly vulnerable to this vice. Trafficking undermines the quality of life of the victims, many of who are already vulnerable or in difficult circumstances and often subjects them to a life of servitude, exploitation, violence and other forms of abuse. The Government is making significant efforts to combat the vice.

104. Kenya has enacted the Counter-Trafficking in Persons Act (No. 8 of 2010). The Act defines trafficking in persons as recruiting, transporting, transferring, harbouring or receiving another person for the purpose of exploitation by means of threat, abduction, force, deception, misrepresentation, abuse, enticement or other fraudulent means, whether the trafficking occurs within Kenya or through the country as a conduit. It also recognises the particular vulnerability of women and children to trafficking. The Act introduces stiff penalties from a minimum of 30 years and/or a fine of 2 million shillings up to a maximum of life imprisonment.

105. The Ministry of Gender, Children and Social Development oversees the anti-trafficking efforts and works with the National Police Service to enforce the Act. Children's Officers in the Ministry work through Children's Advisory Committees in partnership with law enforcement agencies to combat trafficking in children and exploitative child labour. The Ministry also focuses on anti-trafficking work in Mombasa where the sex trade and sexual exploitation particularly of girls is high. The Ministry works with local non-governmental organisations (NGOs) to ensure support for victims of trafficking and sexual exploitation, and through such initiatives has established a 24-hour hotline to report child-trafficking cases. There is still a lot of work to be done in training, educating and coordinating efforts of children's officers, labour inspectors and the police to identify, arrest and mount prosecutions where trafficking in persons occurs. Most convictions have been done under alternative offences in the Children's Act, Sexual Offences Act or the Employment Act. The Ministry of Gender now has a National Plan of Action on Counter-

Trafficking running from 2012 to 2016 to help coordinate and guide national efforts on counter-trafficking.

106. The State has also become concerned that although some Kenyan individuals voluntarily migrate to other countries and particularly Saudi Arabia for domestic work and other economic opportunities, there are increasing reports that many end up being trafficked into domestic slavery, are exploited sexually and or forced into unpaid manual labour. In order to protect its citizens, the Ministry of Foreign Affairs is discouraging Kenyans from such migration and has engaged the Government of the Kingdom of Saudi Arabia over the issues.

4. Protection of vulnerable children

107. The Constitution in Article 53 reaffirms Kenya's commitment to protect the rights of the child. Every child is guaranteed the right to a name and nationality at birth, basic nutrition, shelter, and healthcare, protection from abuse, neglect and harmful cultural practices, violence, inhuman treatment, and hazardous or exploitative behaviour. Every child also has the right to parental protection and care and the Constitution goes a step further to assure children of this right whether or not the parents live together. The Article makes the principle of the "best interests of the child" applicable as the paramount consideration in matters concerning children.

108. The Government of Kenya recognises that even with the legal protection of children, OVCs often marginally enjoy these rights and specific interventions are necessary to protect them. One of the Government's initiatives to protect vulnerable children includes the provision of Cash Transfers for OVCs as discussed in the report.

Article 11 – Right to adequate standard of living

109. Assuring a high standard of living and quality of life for Kenyans is a priority for the Government. In addition to pursuing national economic development, the State is committed to addressing challenges that undermine the quality of life for individuals. Through laws, policies, targeted programmes and financial investments, Kenya is making significant strides in improving the standard of living, alleviating poverty, ensuring access to basic services for all, as well as enhancing access to services and development for marginalised groups.

1. Right to continuous improvement of living conditions

110. Kenya's growth and development plan is anchored in and guided by *the Kenya Vision 2030.* The country aspires to be "a globally competitive and prosperous country with high quality of life for its citizens by the year 2030." The development blueprint is founded on three key pillars: economic, social and political. The economic pillar seeks to ensure the prosperity of all Kenyans through economic development programmes in key sectors aimed at achieving an average GDP growth rate of 10 per cent per annum up to 2030; the social pillar aims at building a just and cohesive society with social equity in a clean and secure environment; and the political pillar focuses on a democratic political system founded on issue-based politics that respect the rule of law, and protects the rights and freedoms of every individual in the Kenyan society.

2. Tackling poverty

The Committee recommended that the State party allocates sufficient funds for the effective implementation of its National Poverty Eradication Plan and poverty reduction strategy, ensure the full integration of economic, social and cultural

rights, and specifically address the needs of persons living in rural and deprived urban areas, the landless, women, children, female-headed households, families affected by HIV/AIDS, persons with disabilities, refugees, internally displaced persons and other disadvantaged and marginalized groups in that plan and strategy. In this regard, the State party is referred to the Committee's Statement on Poverty and the International Covenant on Economic, Social and Cultural Rights (E/C.12/2001/10).

111. Poverty is one of the most significant challenges facing Kenya today. It is most evident in a significant percentage of the population experiencing difficulty in accessing health care, facing food shortages, high levels of unemployment and underemployment, lack of access to education, land, water and housing. The section of the population hardest hit by poverty comprises women, unemployed youth, orphans and people with living disabilities. The Government has pointedly addressed the question of policy through several measures aimed at addressing livelihoods including introduction of alternative livelihood initiatives, access to services, profitability of agriculture, and ensuring access to most basic services by marginalised and vulnerable groups. The measures that have been taken are detailed below.

112. The contributing factors to high poverty levels in Kenya include poor physical infrastructure and poor access to markets, unemployment, lack of access to affordable credit due to high interest rates levied by commercial banks and other financial institutions, high cost of farm inputs and use of poor quality seeds resulting to low returns from agriculture. In some areas of the country such as West Pokot, Tana River, Wajir and Garissa, insecurity has contributed significantly towards rising levels of poverty.

113. The HIV/AIDS pandemic, malaria and tuberculosis are some indirect causes of poverty in the country. Gender inequality due to cultural and traditional values that prevent women especially from achieving their full potential, such as owning assets, land or even livestock, are a significant factor in the extent of poverty in the country. By 2012 over 44 per cent of the population still lives under the poverty line.

3. Legal and policy measures

114. The Constitution has introduced significant legislative changes and provided stronger impetus for programming towards the realisation of economic, social and cultural rights. It recognises the right of every person to the highest attainable standards of health, accessible and adequate housing, adequate food of an acceptable quality, clean and safe drinking water, social security and education.

115. In addition, the State is expected to provide "appropriate social security to persons who are unable to support themselves and their dependents." The realisation of these rights is progressive and the Government of Kenya continues to put in place policies, programmes and administrative measures to facilitate realisation of these rights and to improve the basic living conditions of Kenyans.

116. The focus of the first MTP (2008-2012) was to increase the levels of savings and investments to facilitate envisaged growth and development by 2012, faster job creation, poverty reduction, improved income distribution and regional balance and gender equity. These were complemented by policy, legal and institutional reforms necessary for realisation of the priorities identified.

4. Measures to improve standards of living

117. Over 80 per cent of the Kenyan population depend on agriculture for their livelihoods, and as such, the Government continues to prioritise the creation of an enabling

environment for the development of agriculture to improve living standards as well as to fuel economic growth and development.

118. Job creation in both the formal and informal sectors is a key measure in improving living conditions. Over 500,000 jobs were generated in the 2010/2011 financial year in both the formal and informal sectors. This was an improvement from the previous two years but still fell short of the targeted rates.

119. The CDF initiative has improved development projects and services at local levels, including increasing access to clean water through piped water or borehole water, improving education facilities, supporting community cattle rearing and pastoralist livelihoods, among others. With devolution of governance and services under the Constitution, it is expected that citizens will have greater involvement in setting community development priorities, pursing community projects and monitoring accountability in the use of funds.

120. In the second MTP (2013 to 2018), the Government targets raising the average annual income per person from USD 901 in 2012 to USD 1,200 by 2017, reducing national poverty levels from 44 per cent in 2012 to 28 per cent in 2017, raising the level of Human Development Index for Kenya from 0.522 in 2012 to 0.65 by 2017, reducing both rural and urban inequality by 10 per cent by 2017 and providing appropriate social protection interventions for at least 50 per cent of those requiring it.

5. Right to adequate food

121. Food is a basic necessity without which, other development indicators are severely undermined. In addition to working towards the realisation of food security in Kenya, the Government is also seriously addressing the issue of adequate nutrition. The National Food and Nutrition Security Policy of 2011 provides an overarching framework covering the multiple dimensions of food security and nutrition improvement. The Government is pursuing food and nutrition security which allows all people, at all times, to have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life.

122. The Constitution provides that every person has the right to be free from hunger and to have adequate food of acceptable quality. The Government of Kenya is working progressively to ensure every Kenyan can realise this right. This is through several strategies and programmes that include focusing on marginalised and most vulnerable areas and also enhancing the capabilities of high potential areas in food production. Kenya also has a National Food and Nutritional Policy that not only focuses on increasing access to food but also to accessing nutritious food that promotes health.

123. As recommended by the Committee, the Government has undertaken specific intervention measures that improve access to food and promote food security in the arid and semi-arid lands (ASALs) and other marginalised areas.

124. Over 80 per cent of the population relies on agriculture for their livelihoods. Under *Kenya Vision 2030*, the Government has injected increased financial investments in the agricultural sector in order to improve opportunities for the poor to enhance their self-sufficiency and access to food and to enhance the country's overall economic development.

6. Support to small scale farmers

125. Small-scale farmers constitute 70 per cent of Kenya's food producers. Agricultural production in Kenya has been hampered by high costs of inputs such as fertilizer. Global fertilizer prices have been on the rise, which has adversely affected Kenyan farmers who already face significant constraints, thus negatively affecting crop yields. The Government

has intervened through bulk procurement of 40 per cent of conventional food crop fertilizer requirements and then selling it to farmers at subsidised prices. The intervention is aimed at contributing to cheap fertilizer in the market and increasing farmers' access to much-needed fertilizer at reduced costs. Since the intervention was commenced, the Government has imported 4,500 metric tonnes in the 2007/2008 financial year, rising to 99,116 metric tonnes in 2011/2012. In an effort to make fertilizer more affordable, Kenya began putting in place a plan in 2012 to manufacture fertilizer locally.

126. In order to create an enabling environment for the development of agriculture, in the financial year 2010/2011, the Government intensified implementation of policies initiated to spur growth in the agricultural sector, including, the National Seed Policy, Pyrethrum Sessional Paper, Sugar Sessional Paper, Soil Fertility Policy, Seeds Policy, Nuts Crops Development Policy, National Agribusiness Policy, National Cotton Policy and Roots and Tuber Crops Policy. Through field activities, 3,012 hectares of arid and semi-arid land was reclaimed which the Government expects to result in increased food productivity, improved water storage and reduced environmental degradation, among other benefits.

7. Irrigation for improved food production

127. The country's food security has been adversely affected by the increasing frequency and severity of droughts and floods. The Ministry of Agriculture has been implementing a Water Harvesting for Food Security Project (WHFSP) to boost food security at national, county and household levels while reducing overreliance on rain-fed agriculture. This project involves harnessing surface runoff water for irrigation. Crop yields in irrigated areas demonstrate increases of 100 to 400 per cent, which helps to reduce current pressures on land and the destruction of forests.

128. Water for irrigation programmes has enabled growth of irrigated land under cultivation from 105,000 hectares in 2008 to 135,347 hectares in 2011. Having faced severe food shortages due to the impact of global warming and climate variation in 2009 to 2010, irrigation was elevated as a priority sector for fast tracking in the realisation of the right to food.

8. Agriculture in ASALs

129. Within the WHFSP project, ASAL regions have been provided with funds to construct water pans that provide the communities with water to supplement irrigation and to establish tree nurseries. Since its inception in 2006, more than 306 community water pans and earth dams have been constructed in ASAL areas. The Ministry of Agriculture has earmarked Kshs 285 million for the financial year 2012/2013 to construct a further 116 water pans in the rest of the country.

130. Not only are the water pan projects helping communities to increase irrigation and food production, they are also providing alternative livelihoods for communities in ASAL regions, increasing food production and better access to food locally, conserving the environment and reducing land degradation.

9. Diversifying beyond staple crop

131. Kenya has depended on maize as its staple food crop, at national policy levels and at household consumption levels. However, due to irregular weather patterns, population growth and increasing urbanisation, production of maize does not meet demand. The Ministry of Agriculture has introduced the Traditional High Value Crops Programme in 2006/2007 to promote production and consumption of alternative cereal and non-cereal crops, ensuring diversification of eating habits, food availability and food price stability, to improve food security through provision of drought tolerant and early maturing seed

varieties and ensuring farmers get higher incomes through sale of excess produce and seeds.

132. Since inception the project has distributed a total of 5,096 metric tonnes of assorted drought tolerant food crop seeds, 13,515,379 sweet potato vines, and 14,512,110 cassava cuttings, all valued at Kshs 1.35 billion and reaching and improving the lives of at least 2,410,416 beneficiaries.

10. Pro-poor food security

133. Under the *Njaa Marufuku* Kenya (call to eradicate hunger) Programme, the Government has disbursed Kshs 2.2 billion to 17,545 groups with a membership of 106,950 farmers. The programme has also disbursed Kshs 123 million to 71 primary schools for the feeding programme. The programme supports community driven agricultural development initiatives targeting the most poor and vulnerable groups in society. Interventions are geared towards increased agricultural productivity, food utilisation, agro-processing and value-addition, health and nutrition improvement, water harvesting and conservation of the natural resource base to ensure sustainability of the current production systems. In this way, the Government is enabling more and more of the population to improve their access to food. Children who otherwise would not be attending school due to food unavailability are able to do so due the school feeding programmes.

134. Kenya's National Accelerated Agricultural Inputs Access Programme (NAAIAP) is a pro-poor food security and poverty alleviation Government initiative, providing agricultural inputs subsidy to smallholder resource poor farmers and guaranteeing credit for maize, wheat and rice crops. The programme aims to contribute towards improved livelihoods of 2.5 million small-scale farmers who own or use one hectare or less of land. The project promotes access to and use of farm inputs, and provision of support services to enhance production. Kshs 3.873 billion has been expended through this initiative to reach over 500,000 farmers. Further, Kshs 2.7 billion in credit facilities has been extended to 52,968 farmers and agro-dealers through the *Kilimo Biashara* credit scheme operated by the Equity Bank.

11. Fish farming

135. The National Aquaculture Policy of 2011 promotes a vibrant aquaculture industry and a strategy for marketing support towards increasing individual income and overall food security. The Government of Kenya spent over Kshs 6 billion on increasing fish farming in 2009/10-2011/12 as part of the Economic Stimulus Plan which included the construction of over 48,000 fish ponds and 160 water pans constructed in 160 constituencies. As a result, over 1.5 million Kenyan youth were employed on short-term basis while one million people were indirectly employed and 100,000 directly employed on a permanent basis under aquaculture value chain.

136. In addition to increasing fish production and household incomes, the aquaculture initiatives are aimed at improving nutrition. Fish production increased from 4,220 metric tonnes in 2008 to 19,337 metric tonnes in 2012, the area under aquaculture production increased from 722 hectares to 14,400 hectares, and the per capita fish consumption increased from 3.25kg per person to 3.75kg per person.

137. Under the *Kenya Vision 2030*, the country aims to increase national fish production by at least 10 per cent per annum from the current 150,000 metric tonnes to 450,000 metric tonnes by 2030. This includes a focus on reducing post-harvest losses from 33 per cent in 2012 to 5 per cent by 2030, diversifying the use of fish and fisheries by-products and increasing employment opportunities in the fisheries sector. Towards this end, four mini fish processing plants are under construction (at a total of Kshs 240 million) and are

expected to be operational by end of June 2013. Kenya has made fish production one of the flagship projects under *Kenya Vision 2030*. The Government intends to mobilise Kshs 40 billion over the next five years through Government funding as well as from development partners, the private sector, NGOs and other non-state actors for this purpose.

138. In addition to developing fisheries in non-traditional areas, Kenya is also implementing a World Bank funded project, the Kenya Coastal Development Project (KCDP), which will improve management of Kenya's Coastal and marine resources while strengthening conservation and sustainability of biodiversity. This will include support for alternative livelihoods among the Coastal fishing populations as well as sustainable management of fishing and fisheries.

139. Lake Victoria Environmental Management Project II running from July 2009 to June 2017 aims to achieve the EAC"s Lake Victoria Basin Development vision of "a prosperous population living in a healthy and sustainably managed environment providing equitable opportunities and benefits." Through this project, Kenya aims to improve collaborative management of the trans-boundary natural resources of Lake Victoria Basin for the shared benefit of the EAC Partner States and to reduce environmental stress in targeted pollution hotspots and selected degraded sub-catchments in order to improve the livelihoods of communities dependent on the natural resources of the Lake Victoria Basin. The project has supported community development groups along the lake region and through the projects funds have been disbursed funds for livelihood improvement.

140. The Government of Kenya lobbied for recognition and upgrading of Lake Victoria fish landing stations to increase trade in the catch from the Lake. As a result, six fish landing sites on the Kenyan side of Lake Victoria were upgraded to international standards with support from the European Union and Kenya now enjoys enhanced access of Kenyan fish especially the Nile Perch to EU markets and a resulting reduction in post-harvest losses.

12. Right to water

The Committee recommended that the State party take immediate measures to ensure affordable access to adequate water and sanitation in informal settlements and arid or semi-arid rural areas, in line with the Committee's General Comment No. 15 on the right to water (2002), by, inter alia, reducing waiting times for collecting water, adequately controlling prices charged by private water services and water kiosks, and connecting Kibera to the Nairobi city sewage system. It also recommends that the State party ensure that slum upgrading projects give priority to the construction of social housing which is affordable for disadvantaged and marginalized individuals and families and that affected communities are effectively consulted and involved in the planning and implementation of such projects.

141. Water is the most important natural resource. The right to water is central to the growth and development aspirations of the country. The Government leads its efforts to enhance access to clean water and adequate sanitation through the Ministry of Water and Irrigation. Kenya aspires to safe, adequate, sufficient and affordable water and sanitation for all.

142. Kenya is limited by an annual renewable fresh water supply of only 647 cubic metres against a global benchmark of 1,000 cubic metres and is therefore classified as a water scarce country. The 2009 Kenya Population and Housing Census indicates that about 35 per cent of the Kenyan population rely on water from springs, wells and boreholes while another 30 per cent have access to pi,ed water. The water sanitation situation indicates that in 2009/2010, only 57 per cent of urban populations had access to a safe source of drinking water.

143. To improve on the water security in the country, the Government is undertaking several water projects both in the urban and rural areas so as to increase access to safe drinking water.

13. Improving supply and access

144. Kenya has about 4,000 small dams and 17 large dams with a storage capacity of 180 million cubic metres. This is equivalent to a per capita storage capacity of 4.6 cubic metres, for a population of nearly 40 million people, which is among the lowest ratios in the world. Some significant initiatives to improve access particularly in arid areas and areas with great lack include, completion of the Maruba Dam in Machakos with water storage capacity of 2.4 million cubic metres and treatment capacity of 5,000 million cubic metres, serving a population of 100,000 people. In Nairobi, Sasumua Dam has been rehabilitated, restoring 16 million cubic metres of water and substantially reducing the water shortage in Nairobi. In Nakuru, Olbanita Water project has been completed, reducing stress associated with the search for water among the residents of Nakuru and its surroundings. Kisumu Water Supply Project to double the supply of water to Kisumu residents is complete and will soon be commissioned. In addition, 900 small dams and water pans have been constructed mainly in ASAL areas, resulting in additional water storage of 17 million cubic metres.

145. More than 100 boreholes were drilled and equipped in 2010, enabling 300,000 more people to access clean water in various parts of the country. Four medium sized multi-purpose dams – Kiserian in Kajiado, Umma in Kitui, Chemasusu in Koibatek and Badassa in Marsabit are under construction and expected to be completed before the end of this year. Construction of a further 16 medium sized dams is planned under the MTP with a storage capacity of 405 million cubic metres. Four other large dams are also planned for under the long term to be completed by 2015. This will have an additional capacity of 2.8 million cubic metres.

14. Legal and policy measures

146. The Government is committed to ensuring every Kenyan has access to water within a reasonable distance by 2015. For managing access to water, the Government has separated water resource management and water supply functions, resulting in greater efficiency in water management, enhanced public-private partnerships and greater and more affordable access particularly for those in informal settlements and in rural areas.

147. The legal and policy framework that guides Kenya's water management includes the Water Act No. 136 of 2002 and the Water Policy of 1999, both of which are currently under review to align them to the Constitution. Other proposed policies include the Draft National Irrigation Policy 2012, Draft Water Storage Policy, Draft Trans-boundary Water Policy and the Draft Land Reclamation Policy 2012.

15. Pro-poor water management

148. Infrastructural development aims to achieve a target of at least 90 per cent of urban areas and 70 per cent of the rural areas have water coverage by the year 2015. Setting up of water tariffs with graduated payments for different economic capabilities and uses ensures greater access for the rural and urban poor at more affordable rates. In informal settlements in urban areas, water kiosks supply water at reasonable rates of approximately Kshs two to Kshs five for 20 litres. In ASAL areas, where provision of water through piping or bore holes has not yet been achieved, the communities get free water transported to various localities by water bowsers.

149. In the 2010/2011 financial year, 400 hydrometric stations were rehabilitated out of the targeted 600 in the Kenya Vision 2030 flagship projects. The Urban Project Cycle and the Community Project Cycle projects, as well as rehabilitation works and other directly-funded Water Service Boards projects resulted in an additional 1.6 million people living in urban areas gaining access to water supplies. An additional 854,212 urban residents were added to those with access to sanitation/sewerage services. For the rural population, about 1.3 million additional people had access to a nearby water supply and about 965,807 people gained access to sanitation services. The table below illustrates further:

Table 2
Water Services Boards additional people reached in 2009-2011

WSB	*Additional people served 2009/10*	*Additional people served 2010/11*
Athi	334,700	439,200
Coast	16,839	128,500
Lake Victoria North	115,196	392,292
Lake Victoria South	330,000	480,000
Northern	17,456	—
Rift Valley	304,480	43,200
Tana	152,893	35,742
Tanathi	30,000	82,250
Total	**1,301,564**	**1,601,184**

Source: Ministry of Water and Irrigation.

150. The access to water initiatives both for domestic use and for irrigation have increased the number of families that have improved water for various activities, improved health status, improved housing especially in rural areas, improved economic base of areas with irrigation schemes, increased food availability and lower incidence of malnutrition and water borne related ailments.

16. Increase in financial investments in the water sector

151. Financial investments in the water sector have increased steadily since 2002. Budgetary allocations to the water sector have increased by more than 200 per cent in the last five years (2006/07 to 2010/11), with the development allocation increasing by 252 per cent, while the recurrent expenditure budget has maintained a lower growth rate of 93 per cent.

152. In the Water Services sub-sector, the Government has spent over Kshs 60 billion between 2008 and 2012 to upgrade water and sanitation services infrastructure countrywide, thereby bringing improved and reliable water and sanitation services to nearly seven million additional people. In the 2010/2011 fiscal year, the sector received Kshs 28.6 billion which was up by 16 per cent from the previous year. Within this allocation, the development budget was increased by 41 per cent which then took up 85 per cent of the funds allocated to the sector. Recurrent expenditure increased by 28.5 per cent. Of the funds earmarked for water management and services, the Government disbursed 94 per cent of its allocated funds while development partners disbursed 57 per cent of their earmarked funds. For the period 2011/2012 financial year, a total of KShs 30.3 billion was spent on water development.

153. The table below indicates actual funds received in the water sector.

Table 3
Water Sector Government funds Received

FY	*2006/07 Kshs*	*2007/08 Kshs*	*2008/09 Kshs*	*2009/10 Kshs*	*2010/11 Kshs*
Recurrent	2,667,000,000	3,298,000,000	3,506,000,000	4,012,100,000	5,399,500,000
Development	6,201,000,000	9,432,000,000	15,045,000,000	20,652,00,000	23,200,000,000
Total	**8,868,000,000**	**12,730,000,000**	**18,551,000,000**	**24,664,100,000**	**28,599,500,000**

Source: Ministry of Water and Irrigation.

154. This meant that most of the money allocated to the water sector went into development initiatives as opposed to funding recurrent costs. By extension, more Kenyans were able to benefit from local initiatives that improved the access and quality of water.

17. Right to adequate housing

The Committee recommended that the State party consider including a provision in its new draft Constitution to ensure that evictions are only used as a last resort, adopt legislation or guidelines strictly defining the circumstances and safeguards under which evictions must take place, in accordance with the Committee's General Comment No. 7 on forced evictions (1997), and ensure that each victim of forced evictions is provided with adequate alternative housing or compensation and that he or she has access to an effective remedy.

155. Article 43 (1) (b) of the Constitution recognizes every person's right to accessible and adequate housing. This is an essential component in reaching the country's full development potential. Despite Government efforts, demand still outstrips supply thereby making housing expensive.

156. The rural population accounts for 67.7 per cent of the total population with and the urban population at 32.3 per cent. The homeless are estimated to be 0.05 per cent nationally, comprising 85 per cent male and 15 per cent female. The population living in informal settlements in Nairobi is 36.5 per cent (54 per cent male and 46 per cent female). In Mombasa, 23 per cent of the population lives in informal settlements. In Kisumu, the number is higher with 56 per cent living in informal settlements, 51 per cent of which is male and 49 per cent female.

157. While the vast majority of the population lives in rural areas, Kenya is experiencing a rapid urbanisation which currently stands at about 4 per cent per annum. This is generating greater pressure for affordable and adequate housing than the market can supply.

158. The Government is reviewing the National Housing Policy in order to align it with the Constitution. To accelerate the realisation of the right to housing, the Policy seeks to entrench social housing, emergency housing and cooperative housing as a specific measure to aid in financing low-income housing as well as ensuring sustainable research on housing matters. Data collection for the National Housing Survey 2012 has been completed develop to guide sector policies, regulations and development.

18. Protection from eviction

159. Prior to 2002, a leading cause of homelessness and informal settlements was corrupt allocation of land and forceful eviction of residents without notice and without compensation. The 2010 Constitution, in recognition of Kenya's historical challenges with land ownership, use and access, guarantees the right to own property or to use it in good faith even without title; and where compulsory acquisition occurs, the State must give just

and full compensation. Furthermore, the Government of Kenya has drafted the Eviction and Resettlement Bill 2012 which provides guidelines on how evictions are to be done and the responsibility for resettling the evicted population.

160. The Judiciary recently established a precedent in protection of the right to property even against Government eviction in the 2011 case of *Ibrahim Sangor Osman v. Minister of State for Internal Security and Provincial Administration and Others. The Court determined* that administration officers had violated the rights of residents whom they informed that the land they were occupying would be compulsorily acquired as a road reserve and 21 days later demolished their houses. The court ordered reinstatement of the complainants onto their land and restitution for the demolished houses, and clearly stated that eviction must be preceded with adequate notice and opportunity for potential victims to go to court.

19. Pro-poor housing initiatives

161. The Kenya Informal Settlement Improvement Programme (KISIP) 2011-2016 has been introduced through a partnership between the Kenya Government and the World Bank to undertake tenure regularisation and installation of social and physical infrastructure in selected informal settlements and planning for urban growth in 15 municipalities.

162. The Ministry of Housing is now reviewing the Housing Policy to include social housing. Other legislative measures under progress include include the Housing Bill, the Built Environment Bill, the Evictions and Resettlement Procedures Bill, the Landlord and Tenant Bill, the Metropolitan Areas Bill, the Spatial Planning Bill to repeal the Physical Planning Act, the Community Land Bill and the Public Private Partnerships Bill 2012. The National Slum Upgrading and Prevention Policy is also being developed to guide the slum upgrading and prevention work.

163. Under the National Slum Upgrading and Prevention initiative, 600 housing units were constructed in Kibera decanting site (initial relocation site before actual slum upgrading) with a trunk sewer line. 1,800 households from Soweto East Zone A, part of Kibera informal settlement were relocated. In addition, a 0.5 km access road was completed within Kibera while 200 acres of land was opened for housing development through provision of housing infrastructure facilities. Construction of 915 housing units in Soweto East Zone A with associated physical and social infrastructure was launched on 6th March 2012 by the President and is expected to be completed by August 2014. Once the project is complete it will benefit 1,500 households directly.

164. The Government is also implementing construction of 2,592 housing units using appropriate building technology in Turkana County for internally displaced persons. The units are scheduled for completion in 2013.

165. Construction of 450 housing units in Mavoko, Athi River, on the outskirts of Nairobi under the Sustainable Neighbourhood Programme is ongoing. This project involves mixed development of units of upper middle-income housing, lower middle-income housing and low-income housing and associated physical and social infrastructure.

166. To enhance affordability, 25 housing cooperatives were formed in various informal settlements in Kisumu, Mombasa, Nairobi, Nyeri, Eldoret, Embu, Kakamega, Limuru and Mavoko and Kshs nine million worth of savings mobilised.

167. Kenya's housing market, particularly in urban areas, remains among the most expensive in Africa. Private developers have focused on housing for upper middle income and high-income groups. There is an under investment in low and middle-cost housing by both the public and private sectors. Demand for new housing units in urban areas currently stands at 200,000 units annually but only 23 per cent of this need is being met. This

shortfall is giving rise to the proliferation of squatter and informal settlements and overcrowding. Experts estimate that to seal the gap, the economy must be in a position to mobilise an average of KSh310 billion yearly. These remain key challenges in realising the right to adequate housing for many Kenyans.

Article 12 – Right to health

168. The *Kenya Vision 2030* on which the country anchors its national development plans recognises that the achievements of its development goals is contingent upon a healthy working human resource which should be partly achieved through the provision of quality, efficient and acceptable health care systems. Its goal for the health sector is to "provide equitable and affordable health care at the highest affordable standards to her citizens". The Government has therefore put in place several measures including placing greater emphasis on preventive healthcare and devolving healthcare funding and management to give greater responsibility for healthcare delivery to hospitals, health centres and dispensaries. However, with Kenya's population growing at a rate of 3 per cent annually, the population will continue to place a huge demand for health services.

1. Legal and policy measures to enhance the realisation of the right

169. Immediately after the establishment of a coalition government following the 2007 general elections, as part of the re-organisation of government the then Ministry of Health was divided into the Ministry of Public Health and Sanitation and the Ministry of Medical Services. Whereas having a Ministry of Public Health and Sanitation has proven good in terms of giving prominence and bringing more resources to preventive care, this reorganisation had an effect on the implementation momentum that had been built over the previous five years as would, any complex system with multiple actors. On occasion, implementing agencies as well as consumers were not very clear on the functions of the different Ministries. Following the 2013 general elections the functions of the two ministries have now been merged again in view of the constitutional requirement which has reduced Government Ministries from 44 to a maximum of 22.

170. The Constitution now entrenches the right to the highest attainable standard of health including reproductive health and emergency medical treatment under Article 43. Article 43 also includes other rights that have a bearing on health: the right to clean water, the right to housing and sanitation, the right to education, the right to food, and the right to social security. Like all other rights, there is guarantee of equal and full enjoyment of this right without discrimination in the terms set out in Article 27 of the Constitution. For children (Article 53) and minorities and marginalised groups (Article 56), the Constitution reiterates the right to basic nutrition, shelter and health care and reasonable access to water, health care services and infrastructure respectively.

171. Consequently, the Ministries of Medical Services and Public Health in putting together the new Kenya Health Policy, new National Health Sector Strategic Plan, and the Second Health Sector Plan of the *Kenya Vision 2030* have considered how to interpret this right vis-à-vis their services and particularly under the devolved structure of government.

172. In particular, the Kenya Health Policy (2012-2030) aims at "attaining the highest possible health standards in a manner responsive to the population needs". The Policy seeks to achieve this goal through supporting provision of equitable, affordable and quality health and related services at the highest attainable standards to all Kenyans. It is designed to take the country beyond the traditional health services approach towards focus on health using a primary health care approach which remains the most efficient and cost-effective way to organise a health system. The focus of the Policy applies a human rights based approach, a strategy that will enable rights holders enjoy the highest possible level of health and

consequently ensuring that they are able to participate in development activities maximally as envisaged in *Kenya Vision 2030*. Six policy objectives are defined:

- Eliminating communicable conditions;
- Halting and reversing the rising burden of non-communicable conditions;
- Reducing the burden of violence and injuries;
- Providing essential health care;
- Minimising exposure to health risk factors; and
- Strengthening collaboration with health related sectors.

173. In addition, Kenya has introduced the Health Bill which is intended to: consolidate the laws relating to health; provide for regulation of health care service and health care service providers; provide for establishment of national regulatory institutions; coordinate the inter relationship between the national and county health institutions; establish a coordinating agency of professionals within the health industry; and provide for attainment of the basic right to health has been developed.

174. Furthermore, the adoption of the Sector Wide Approach to health has provided a framework for structured engagement for all health sector stakeholders. Notable developments in this regard include the adoption of joint annual implementation planning and annual review of sector performance. Through these processes, it has increasingly become possible to determine the level of donor and partner resources available for health through either budgetary support or off budget, which is important for determining the sector's resource envelope. Other advances include the development of a national health infrastructure plan to guide investments in health; the restructuring of the National Medical Supplies Agency to facilitate timely procurement and distribution of medical supplies; a human resource strategy linking demand and supply for human resources; encouragement to manufacturers to produce drugs and related commodities locally to reduce the cost of healthcare; and strengthening of the referral system through provision of autonomy for district and provincial hospitals.

175. Other notable legal developments impacting the health sector include the entry into force of the HIV and AIDS Prevention and Control Act (No. 14 of 2006) on 30th March 2009 as had been recommended by the Committee in its Concluding observations. There is now in place a legal framework for the prevention, management and control of HIV and AIDS.

176. The Cancer Prevention and Control Act (No 15 of 2012) has also been enacted. This is particularly important because cancer has become a major killer in Kenya and only one public hospital, Kenyatta National Hospital, offers cancer treatment. The new law commits to "promote access to quality and affordable diagnostic and treatment services for persons with cancer". Resources to back this up are expected to be allocated in the MTP currently under development.

177. For persons with disabilities, Section 20 of the Persons with Disabilities Act (No. 14 of 2003) mandates the National Council for Persons with Disabilities to monitor the provision of health care to persons with disabilities so as to ensure that the services are devoid of any form of discrimination. It also is supposed to ensure that the programmes of the Ministry of Health are geared towards prevention of disability; early identification of disability; early rehabilitation of persons with disabilities; enabling persons with disabilities to receive affordable rehabilitation and medical services in public and privately owned health institutions; availing essential health services to persons with disabilities at an affordable cost; and availing field medical personnel to local health institutions for the benefit of persons with disabilities. The Government's commitment can also be found in

several policies. Indeed, the National Reproductive Health Policy, 2008 recognises that women with disabilities are also entitled to access reproductive health services. It has identified the need to improve the sexual and reproductive health of youth with disabilities.

2. Measures relating to access

178. Accessibility to health facilities in Kenya is estimated at 52 per cent based on the 5km radius norm although there are variations across the country especially in the Northern part of Kenya. To address the situation, during the reporting period, the health related flagship projects on improving health infrastructure network in the country made useful access related gains with inputs from the CDF that has aided facility infrastructure development/upgrading and from the Economic Stimulus Package for hiring of staff for rural health facilities which has seen a total of 3,866 nurses recruited under the Economic Stimulus Package and posted to health centres and dispensaries within constituencies countrywide. This is in comparison with the flagship project of recruiting 20 nurses per constituency starting September 2009.

179. There has been an increase in the number of hospitals from 167 in 2008 to 275 in 2012. Moreover, funding to the health sector has also been increasing. Enhanced resource allocation to the Ministries of Health which is also partly attributable to a rise in development funding by development partners, has seen an increase (in absolute numbers) from Kshs Million 34, 845 in 2008/09 to 47,011.5 in 2009/10; 55,155.5 in 2010/11 to 64,019 in 2011/12; and 86,968.3 in 2012/13. However, this allocation remains inadequate as the overall allocations have remained at 6 per cent of the overall Government budget for the last three years.

The Committee, in its Concluding Observations, in Paragraph 32 expressed its concern over the high maternal, infant and under-five mortality rates and made a number of recommendations to address the situation.

180. Investments during the reporting period and policy measures such as free access to healthcare in public hospitals for children under five years including for children with disabilities have resulted in remarkable achievements in the reduction of under five mortality from 115 per 1,000 live births in 2003 to 74 per 1,000 live births in 2008/9 and infant mortality from 77 per 1,000 live births to 52 per 1,000 live births in the same period. The proportion of children fully immunised against communicable diseases increased from 64 per cent in 2005/06 to 77 per cent in 2009. However, the declining maternal health indicators are worrying. Maternal mortality ratio has deteriorated from 414 in 2003 to 488 deaths per 100,000 live births in 2008-09; only 43 per cent of children are delivered in a health facility. Births attended by skilled health personnel declined from 51 per cent in 2007 to 43 per cent in 2010/11.

3. Measures relating to affordability and equity

181. In the past five years, through its Health Services Sector Fund, funds pooled from both Government and private sector actors have been disbursed directly to health centres across the country with the aim of increasing access to health services, addressing equity in health service delivery and improving quality and responsiveness of health systems and services to the needs of the population. It also aims to increase efficiency and effectiveness in the management of financial resources by empowering the Facility Management Committees, reducing bureaucracies in the disbursement of financial resources to levels I-III facilities. Level I refers to community level interventions, level II refers to dispensaries and Level III to health centers. This has strengthened the intended focus on health care. Between November 2010 and 30th June 2011, a total of Kshs 353,352,000 had been disbursed to 653 Health Centres.

4. Reproductive health

The Committee recommended that the State party ensure affordable access for everyone, including adolescents, to comprehensive family planning services, contraceptives and safe abortion services, especially in rural and deprived urban areas, by eliminating formal and informal user fees for public and private family planning services, adequately funding the free distribution of contraceptives, raising public awareness and strengthening school education on sexual and reproductive health, and decriminalizing abortion in certain situations, including rape and incest.

182. During the reporting period the Government has established the innovative Output-Based Aid Voucher system intended to contribute to reduction in both maternal and infant mortality rates by improving access to and utilisation of reproductive health services by economically disadvantaged populations. The programme was piloted in three rural districts (Kisumu, Kiambu and Kitui) and in two urban sites in Nairobi (Viwandani and Korogocho). Plans are under way to scale-up the initiative to new counties. Since its inception, the programme has reached 51 per cent of poor pregnant women in the pilot sites, an indication that the programme has registered success in increasing the proportion of institutional deliveries with a skilled birth attendant. The challenge though with this initiative is its heavy reliance on external funding. In 2013, the Government introduced a waiver of maternity fees in all public hospitals.

183. A Community strategy is also being implemented through establishment of community units and the training of community health workers to provide basic community-based services through enhancing communities' awareness of health preventive and promotional strategies so that they adopt positive health seeking behaviour.

184. Access to affordable and essential drugs and medication is a pre-requisite for the realisation of the right to health and licensing the use of generic drugs is one way to ensure affordability. However this should be balanced with the reality that ridding the market of counterfeit drugs also contributes towards this goal. In a move to fight counterfeit drugs, Kenya enacted the Anti-Counterfeit Act (No. 13 of 2008) to prohibit trade in counterfeit goods including drugs. But in April 2012, the High Court declared the Anti-Counterfeit Act a violation of the right to the highest attainable standard of health in as far as it limited access to generic medicines and drugs – *PAO and 2 others v. Attorney General (2012) Eklr*. The three petitioners in the matter were adults living with HIV/AIDS and at the time of the petition had been taking medication since generic ARVs became widely available. The petitioners averred that Section 2 of the legislation did not differentiate between counterfeits and generic drugs and thus they were afraid in its enforcement, the very drugs on which their lives depended would be criminalised and thus liable to seizure. Further that the cost of their treatment was likely to increase considerably as they would have to rely on branded drugs that are more expensive. The Court asked the State to reconsider the provisions of Section 2 of the Act alongside its constitutional obligation to ensure that citizens have the highest attainable standards of health and make the appropriate amendments to the Act. It is expected that the required amendments will be passed by the 11th Parliament. The decision comes at a time when the donor-driven financing for the provision of HIV/AIDS related medical services especially life-saving drugs is decreasing; hence its importance. Moreover, for a country with a high disease burden the availability of cheaper drugs and medicine should be a priority if the right to health is to be realised.

5. Universal health coverage

185. While universal health coverage remains a key challenge in Kenya the Government remains committed to its provision. In 2004 and again in 2011, there have been serious but unsuccessful efforts to enact laws providing for universal health coverage principally due to the strong diversity of quality care provided by existing actors and weak purchasing power

due to high levels of poverty. However efforts to move towards universal coverage continue to be implemented progressively. The NHIF has been the main vehicle for this effort and since 2006 it has increased its membership of formal and informal sectors alike and unlike private insurance companies provides in-patient cover to the elderly.

186. One of the most ambitious and laudable first steps that has been undertaken by the Government through NHIF is the roll out of a medical cover for civil servants which began in 2012. It is a comprehensive medical insurance cover for its employees and their eligible dependants. The programme offers out-patient and in-patient services to teachers, civil servants and members of disciplined forces in a cover worth Kshs 4.5 billion annually. However, accountability issues in the Fund remain a challenge in the achievement of universal health coverage.

187. As the country readies itself for government restructuring following the first general elections since the promulgation of the Constitution, the health sector has had several reviews of performance, addressing challenges and aligning its targets to the Constitution as well as rationalising role sharing between the National and County Governments. Among key challenges identified are the institutional deliveries which are at a low of 43 per cent, inadequate universal health coverage, inadequate budgetary allocation and improper resource use. It is expected that the new MTP will set new targets for addressing these challenges progressively.

Article 13 – Right to education

188. The State does realise that education is the key for empowering the most marginalised and vulnerable individuals in society. Marginalised individuals like the girl-child, pastoralists and persons with disabilities also tend to have the least possibility of acquiring an education; and the State continues to make conscious and concerted efforts on an affirmative basis to enable these individuals to best exploit their life-chances alongside their other Kenyan peers through primary, secondary and tertiary education.

189. Investment in FPE and Free Day Secondary Education (FDSE) has remained a key flagship programme, coming among the top five recipients of public expenditure in the last five years. Since the introduction of FPE enrolment has improved dramatically and a combination of other measures have been undertaken to enhance progressive realisation of this right.

1. Measures taken to fulfil the right

190. The Constitution in Article 43 (1) (f) provides that every person has the right to education. This right is reiterated in Article 53 (1) (b) which provides that children have the right to basic and compulsory education; Article 54 (1) (b) provides that persons with disabilities have the right to access educational institutions; Article 55 (a) provides that the State shall ensure that youth have access to relevant education and training; and Article 56 (b) provides that the State shall provide minorities and marginalised groups with special opportunities in education. The Children's Act also acknowledges and protects every child's right to education.

2. Legal and policy reforms

191. To give effect to the Constitution, the Basic Education Act (No 14 of 2013) has been passed into law to regulate the provision of basic education and adult basic education in the country. The law also clarifies the roles of the National and County Governments as regards education as provided for in the Fourth Schedule of the Constitution. Under this Schedule, the National Government shall be responsible for setting educational policy, standards,

curricula, examinations and the granting of university charters, tertiary education, institutions of research and higher learning, primary and secondary schools as well as special education. The County Governments on the other hand are in charge of pre-primary education, village polytechnics, home craft centres and child care facilities.

192. Two key policy documents have been formulated. The finalisation of the Sessional Paper on Education titled Aligning Education and Training to the Constitution of Kenya and *Kenya Vision 2030* (May 2012) has presented guidance on the areas of reforms and institutional strengthening. The Paper proposes reforms that cut across the entire education sector and include policies and strategies for addressing institutional reforms, management and financing of education, the curriculum, teacher education, teacher development and management, and strategies for bringing digital technology within the reach of every Kenyan child.

193. The Sessional Paper on Science, Technology and Innovation aims at providing the national policy framework to acquire, develop and promote science, technology and innovation for national transformation to a knowledge economy. It aims to mainstream application of science, technology and innovation for national transformation to a knowledge economy. It aims to mainstream application of science, technology and innovation in all sectors and processes of the economy to ensure that Kenyans benefit from acquisition and utilisation of available capacities and capabilities to achieve the objectives of *Kenya Vision 2030*. However, Kenya acknowledges the challenge of lack of integration of culture in the formal education system which impedes cultural creativity and expression.

3. Enhancing access

194. The Government recognises the significant social and economic payoffs derived from investment in Early Childhood Development and Education (ECDE) including overcoming children educational disadvantages for poor children, supporting parents and increasing female employment because of the level of care needed at this level of education. Previously investment in this area has been left mostly to the household, private sector and religious organisations. In 2012, however, public investment began and the processing of capitation grants to support ECDE with a budget of Kshs 1.6 billion to about 19,000 public ECDE centres with 1.4 million children commenced.

195. Enrolment in the ECDE increased from 1.914 million (967,544 boys and 946,678 girls) in 2009 to 2.13 million (1,100,890 boys and 1,092,181 girls) in 2010. The Gross Enrolment Rate (GER) increased from 60.2 per cent (61.6 for boys and 58.7 for girls) in 2009 to 60.9 per cent (60.3 for boys and 61.4 for girls) in 2010. The Net Enrolment Rates (NER) increased from 40.4 per cent (40.8 per cent for boys and 40.0 per cent for girls) in 2009 to 41.8 per cent (42.3 per cent for boys and 41.2 per cent for girls) in 2010 against the MTP target of 76.6 per cent (76.9 per cent for boys and 76.2 per cent for girls).

196. Likewise at the primary education level the GER increased from 108.9 per cent (118 and 106 per cent for boys and girls respectively) in 2007 to 110.0 per cent (112.8 per cent and 107.2 per cent for boys and girls, respectively) in 2009, and dropped slightly to 109.8 per cent (109.8 per cent and 109.9 per cent for boys and girls, respectively) in 2010. The NER increased from 91.6 per cent (94.1 per cent and 89.0 per cent for boys and girls, respectively) in 2007 to 92.9 per cent (93.6 per cent and 92.1 per cent for boys and girls, respectively) in 2009 and then dropped marginally to 91.4 per cent (90.6 and 92.3 per cent for boys and girls, respectively) in 2010. The gender disparity in enrolment has been improving in favour of girls. The gender parity index at primary level was 0.97 in 2007, then 0.98 in 2009 while in 2010 it was 1.02.

197. To improve availability of opportunities for education, the Government has supported the construction and rehabilitation of existing facilities and for pastoralist areas,

provision of boarding and mobile schools. In what the MTP called the flagship projects in the education sector for 2009/2010, two model schools per constituency (making 420) were supported with Kshs 3.5 million per school to expand opportunities for the increased number of enrolled pupils. Subsequently, for example, the NER for North Eastern Province (now Garissa, Wajir and Mandera Counties) was 40.3 per cent (41.5 per cent male, 38.9 per cent female) against an MTP NER target of 38.6 per cent for 2010 under *Kenya Vision 2030*. This shows that the target was achieved and this was attributed to continued implementation of FPE as well as sensitisation of parents/communities.

4. Equity and participation measures

198. **The Committee recommended that the State party (a) increases the funds allocated to bursaries and textbook subsidies for children from poor families, as well as to school transportation and mid-day meals in remote rural and deprived urban areas; (b) facilitates the readmission of girls who dropped out of school due to pregnancy by supporting them in finding adequate arrangements for the care of their babies; (c) ensure adequate access for nomadic children to mobile schools, including in the North Eastern Province; and (d) cater for the special needs of children with disabilities and integrate refugee children and internally displaced children in the regular school system.**

199. During the reporting period, and in response to the Committee's recommendation, special measures have been taken to strengthen the school feeding programme which continued to provide mid-day meals to approximately 1.2 million pre-primary and primary school children in 64 arid and semi-arid districts and informal settlements of Nairobi.

200. The Government recognises that gender mainstreaming is a social justice issue and has therefore continued to seek ways of identifying ways of responding to the needs of women so as to advance gender equity in education. In 2007, the Government developed the National Gender Policy in Education with the aim of ensuring gender responsive education. During the reporting period, under this Policy, there have been initiatives aimed at providing grants for the construction of laboratories and supply of equipment to girls' schools as a way of improving girls' performance in science and technology.[2] The policy of allowing girls to join higher institutions with lower grades than boys continues to operate. Girls are also being provided with sanitary towels to enable them to participate in the learning process without missing school attendance during menstruation.

201. Another measure that has been take and which is in line with the Committees recommendations relates to increasing bursaries and textbook subsidies for children from poor families. During the reporting period, the textbook-pupils ratio (TPR) for lower primary school has improved from one textbook for more than 10 pupils before 2003 to 1:3 in 2007, 1:2 in 2008, remaining at 1:2 in 2009 and 1:1 in 2010. For upper primary TPR has improved from 1:2 in 2007 to 1:1 in 2008 and 1:1 in 2009 and 2010, thus improving the quality of education.

202. However there is still an on-going challenge with regard to the teacher pupil ratio despite the fact that the Government has recruited 29,060 teachers in the last five years. Shortage of teachers means that many schools have a pupil to teacher ratio above 40.1, with as high as 85.1 ratio in the high potential and urban areas. On the average, the pupils to teacher ratio at primary level moved from 44:1 in 2007 to 45:1 in 2008, 2009 and 2010.

[2] For details see: Mainstreaming Gender in Science and Technology Policies and Programs in Kenya: A Report of the National Council of Science and Technology in Collaboration with UNESCO Bureau for Science and Technology in Africa, December 2010.

5. Catering for special needs of children

203. The Committee's recommendation that the Government takes measures to cater for special needs of children with disabilities, and integrate refugee children and internally displaced children in the regular school stem has been happening progressively. Measures have been taken to enhance education in the informal settlements, with the Government providing capitation grants to 474 non-formal schools. However, this was below the MTP target of 700.

204. With regard to children with disabilities, the Government has progressively established programmes in various institutions to cater for these learners. There are presently 1,882 primary and secondary schools in Kenya that provide education for learners with special needs. These schools have 50,744 enrolled learners with disabilities. 24,000 of these learners are in special schools while the rest are in regular schools. This increase has been realised as a result of the efforts made to include learners with disabilities in regular schools through FPE. There are also 15 special secondary schools and integrated programmes.

205. With regard to internally displaced children, the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act places the primary responsibility for the provision of economic and social rights which include education on the Government.

206. Refugee children are provided with educational opportunities within their areas of residence as part of the international assistance that Kenya receives. They are provided with primary, secondary, technical as well as vocational education and there are also university scholarships through UNHCR. The schools within the refugee settings follow the Kenyan curricula which enable refugees to acquire academic certificates that they can use once they return home or proceed to be resettled abroad.

6. Secondary education: enhancing availability of opportunities

207. During the reporting period, the flagship projects for 2008/12 aimed at constructing and fully equipping 560 secondary schools and rehabilitating existing ones. In the first year alone of the MTP, funds covering 200 such schools had been disbursed. Another Government initiative that has complemented this effort is the CDF that has also facilitated construction of many district schools thereby increasing access.

208. Indeed the number of secondary schools has increased from a total of 6,485 secondary schools in 2007 to 6,971 in 2009 and 7,308 in 2010. Enrolment grew from 1.18 million students in 2007 (639,393 boys and 540,874 girls) to 1.5 million (804,119 boys and 695,896 girls) students in 2009 and. further, to 1.7 million (916,302 boys and 792,818 girls) students in 2010.

209. The GER for secondary increased from 38.0 per cent (41.4 per cent for boys and 34.6 per cent for girls) in 2007 to 45.3 per cent (49.0 for boys and 41.8 for girls) in 2009. In 2010, the GER increased to 47.8 per cent (50.9 per cent for boys and 46.3 per cent for girls. The NER recorded an increase from 28.9 per cent (29.8 per cent for boys and 27.9 per cent for girls) in 2007 to 35.8 per cent (36.5 per cent for boys and 35.1 per cent for girls) in 2009. In 2010, the NER dropped to 32.0 per cent (32.4 per cent for boys and 32.9 per cent for girls).

7. Measures relating to affordability of secondary education

210. In 2008, the Government put in place and started implementing FDSE which provides financing to take care of tuition with a view to making secondary school education affordable. There is also a secondary bursary scheme meant for vulnerable groups including

orphans, girls and children from poor families in informal settlements, poverty-stricken families in high potential areas, and families in ASAL districts. Although the Government has introduced FDSE, the programme went on to assist the poor to meet other secondary education expenses not catered for by the Government during the period under review and a total of Kshs 2.7 billion was awarded to 357,275 students in all the 210 constituencies. The Government continues to implement FDSE towards progressive realisation of free secondary education across the country. Further, the development of "Return to School Guidelines" are ensuring that schools are able to readmit girls who may have dropped out due to pregnancy or other factors.

8. Providing opportunities for further education and training

211. One of the key goals of the *Kenya Vision 2030* is to ensure that every Kenyan has decent and gainful employment. It is therefore imperative that education is relevant and prepares learners for the job market. To move towards this goal, the Government initiated the construction of 13 new public Technical and Vocational Education and Training (TVET) institutions across the country to expand access to TVET. In addition, in order to provide quality and relevant skilled human resources in the post-secondary school level cadre, the Ministry of Education established a Centre of Excellence Programme where technical training institutions were provided with modern equipment as well as the upgrading of teaching staff, with a view to producing the best graduates for the market. Under the Economic Stimulus Package of 2009/10 a total of Kshs 2.1 billion was utilised for the construction of new laboratories and workshops in all TVET Institutions under the Ministry. The number of registered public and private TVET institutions has since increased to a total of 813 TVET institutions of which 493 have full registration status as at June 30th 2012.

212. Other measures in this sector include the introduction of a bursary scheme; establishment of standards; and the development of curricula. In regard to standards, the Directorate of Technical Accreditation and Quality Assurance (DTAQA) was established in May, 2008 to discharge the quality assurance and standards functions. This has enabled the Ministry of Education to coordinate and develop technical training through facilitation and supervision of TVET institutions, their registration and approval of programmes. Additionally, a TVET Accreditation Handbook with criteria for assessment of TVET institutions has been developed to protect the quality of education provided in these institutions.

213. With regard to curricula, in 2010/2011 the Ministry prepared a "TVET Curriculum Development Standard" with a view to ensuring that any curricula developed is relevant to the job market thereby making it easier for graduating students to be absorbed in the world of work after graduation.

214. To secure and enhance these gains, the Technical and Vocational Education and Training Bill, 2012 was introduced at the close of the 10th Parliament. It is expected that the 11th Parliament will enact this into law.

9. Reducing cost barriers to enhance access to higher education

215. Attainment of higher education unleashes huge public benefits that are critical to a developing economy like Kenya. The State recognises the importance of higher education and has made enormous legislative, policy and institutional investments in the sector so that as many students as qualify to enrol in universities have the opportunity to do so. The Universities Act (No 42 of 2012) has set the framework for higher education reforms which includes the incorporation of private universities into the selection body that will in future pick State-funded students to both public and private universities. Further, Adult and Continuing Education are now included in the Basic Education Act (No. 14 of 2013).

216. Consequently the Government has created the necessary supportive environment for private sector investment in higher education and also invested in public universities growth. The sector has witnessed tremendous growth in terms of enrolment and the numbers of universities and university constituent colleges. The number of private universities has increased from 13 in 2003 to 26 in 2012, while the number of public universities and university constituent colleges increased by 340 per cent, rising from six universities and one university constituent college in 2003, to seven fully fledged public universities and 24 university constituent colleges in 2012. The total number of universities in the country now stands at 60 institutions and all the 24 university colleges may apply for accreditation into fully fledged national public universities under the provisions of the Universities Act. While this increase will somewhat ease Kenya's crisis of admissions, more still needs to be done to accommodate all qualifying students. Currently, only about half get places in public universities.[3]

217. The increase in enrolment at higher learning institutions has been accelerated by the introduction of FPE and FDSE programmes in 2003 and 2008 respectively, which trend is expected to continue. As at June 2012, the number of university students was estimated at 218,862 spread across the seven public universities.

218. During the reporting period, the Higher Education Loans Board continued to give financial support to university students. During the fiscal year 2011/2012, a total of Kshs 4,810,876,250 was disbursed to 106, 136 Kenyan students pursuing undergraduate and post graduate university education locally and within the EAC.

219. This growth has however generated issues relating to the quality of education being offered in these institutions which is the single most challenging issue that the Government is faced with but which the newly enacted Universities Act has sight of.

Article 15 – Right to take part in cultural life

220. Cultural expression and respect for the diverse cultural practices in Kenya has historically had the requisite space for existence though the institutional infrastructure important for growth and development has been inadequate. However, with the passage of the Constitution, culture has received renewed prominence and is now recognised in the Constitution under Article 11 which terms it as "the foundation of the nation and the cumulative civilisation of the Kenyan people and nation". Article 44 provides for the right of every person to use the language of the person's choice and to participate in their cultural life.

221. In 2008 culture and related issues were moved to a dedicated Ministry, the Ministry for National Heritage and Culture. In the new Ministry, is a dedicated Department of Culture mandated with the responsibility of coordination and promotion of all cultural activities in the country and internationally.

Measures taken to fulfil the right

The Committee recommended that the State party recognizes the Nubians and the Ogiek as distinct ethnic communities, as well as their right to the preservation, protection and development of their cultural heritage and identity.

[3] For details see Gilbert Ng'ang'a: "New university colleges increase admissions capacity": University World News, Issue No: 220 of 6 May, 2012.

222. In Kenya, recognition of the distinct ethnic groups is an important part of any people's cultural determination. The Government recognises this and during the 2009 Census which was made operational under the banner of "Nipo! Natambulika!" (Loosely translated as "I am here, I am recognised"), provided for individuals to determine and state their preferred identification of ethnic affiliation. Previously unidentified small ethnic groups including the Yaaku, Nubians, Ilchamus and Sakuye communities were captured in the census as such. The choice to self-identification also included a category of individuals who were opposed to being identified as affiliated to any ethnic group. These were given the option of being captured as just "Kenyan".

223. At the policy level, the National Policy on Culture and Heritage has been developed. The Policy operationalizes the constitutional recognition of Kiswahili as an official language. Kiswahili has been a national language and its recognition as an official language will significantly enhance access to official documents and therefore access to information to Kenyans who would otherwise have been excluded. Further, under Article 7, the State is enjoined to promote the diversity and the languages of the people of Kenya, including use of Kenya Sign language, Braille and other communication formats.

224. The Constitution in Schedule 4 also requires county governments to recognize and promote the role of culture in governance and development in the counties. The Government through the Kenya Copyright Board is developing a bill to protect traditional knowledge and traditional cultural expression and the question of copyright and scientific research. The Department of Culture has undertaken several programmatic initiatives including the following:

- The construction of 16 community cultural centres is on-going with a budgetary allocation of Kshs 294,355,000 over five years since 2009. When fully operational, these centres are expected to provide full and sustained support for the development of the diverse cultural expressions in the country;
- Supporting Arts exhibitions for non-educational institutions and for cultural practitioners including exchange programmes for poor rural schools;
- Coordination of about 50 Community Cultural Festivals annually in various regions of the country in partnership with local communities including the marginalised and people with disabilities. These programmes act as avenues for promoting and preserving the rich cultural heritage as well as facilitating participants in enjoying their cultural life and building national cohesion and integration.

225. After ratifying the 2003 and 2005 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage and the Convention on the Protection and Promotion of Diversity of Cultural Expressions, the Department has initiated community projects on safeguarding of the traditions and practices associated with several communities. The traditions of the Miji Kenda community, the Isikhuti Dance among the Luhya, the rites of passage among the Maasai and the skills of the Wamunyu wood carvers among the Kamba are some of the unique cultures which will be safeguarded under UNESCO funding.

226. Kenya has a big challenge in the area of culture due to lack of cultural data and statistics to support its development for planning purposes, as it falls in the informal sector. Due to its informal status, the level of technical and financial support is minimal leading to inadequate infrastructure, research, and lack of lobbying skills for approval of cultural legislative frameworks. As a result, the sector which has a lot of potential has not had a major impact in addressing pertinent cultural practices and traditions affecting gender, FGM, negative ethnicity, health, tourism, employment and children rights even though the UN recognises culture as the fourth pillar.

227. However, the Government is committed to ensuring data for the cultural sector is developed. In 2012, Kenya partnered with the EAC Partner States in conducting a national mapping study on creative cultural industries. Already a pilot study has been successfully carried out and a road map for the full national study has been finalised. This will result in development and enjoyment of the cultural creative industries sector and enhanced linkages between culture and mainstream tourism sector to ensure exploitation of cultural heritage is beneficial to every Kenyan. Further, research, utilisation and development of indigenous knowledge and appropriate technology will be an essential ingredient for encouraging innovations and finding community-based solutions to challenges facing the nation as well as setting the foundation for sustainable development. Other benefits of developing the culture sector will be empowering the communities to safeguard and promote the environment by tapping on indigenous knowledge systems on environmental management and integrating culture to the education system which leads to creativity and scientific innovation.